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THE STORY
OF THE
UPPER CANADIAN REBELLION

BY

JOHN CHARLES DENT

AUTHOR OF "THE LAST FORTY YEARS" &C.

VOL. I.

TORONTO.
PUBLISHED BY C. BLACKETT ROBINSON.
1885

Engd by H.R.Hall's Sons New York

THE STORY

OF THE

UPPER CANADIAN REBELLION;

LARGELY DERIVED FROM ORIGINAL SOURCES AND DOCUMENTS.

BY JOHN CHARLES DENT,

Author of "The Last Forty Years," etc.

'Well, God be thanked for these rebels."—1 *Henry IV.*, Act iii. sc. 3.

'Truth is not always to be withheld because its expression may wound the feelings of public men, whose official acts have subjected them to public censure. If it were, history and biography would cease to be guiding stars, and, above all, would offer no wholesome restraint to the cruel, or corrupt, or incompetent exercise of authority."—*Tupper's Life and Correspondence of Major-General Sir Isaac Brock.*

"We rebelled neither against Her Majesty's person nor her Government, but against Colonial *mis*-government. . . . We remonstrated; we were derided. . . . We were goaded on to madness, and were compelled to show that we had the spirit of resistance to repel injuries, or to be deemed a captive, degraded and recreant people. We took up arms, not to attack others, but to defend ourselves."—*Letter to Lord Durham from Dr. Wolfred Nelson and others, confined at Montreal, June 18th*, 1838.

Toronto:
C. BLACKETT ROBINSON, 5 JORDAN STREET.
1885.

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I DEDICATE THIS BOOK TO MY ESTEEMED FRIEND,

GEORGE STEWART, JUN'R,

OF QUEBEC:

WHOSE RESEARCHES IN A KINDRED DIRECTION WILL ENABLE HIM TO DO FULL JUSTICE TO WHATEVER IS MERITORIOUS IN IT; WHILE HIS GENEROUS APPRECIATION OF THE EFFORTS OF HIS LITERARY BRETHREN WILL RENDER HIM INDULGENT TO ITS DEFECTS.

JOHN CHARLES DENT.

Toronto, 1885.

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THE STORY

OF

THE UPPER CANADIAN REBELLION.

CHAPTER I.

THE BANISHED BRITON.

IN the afternoon of a warm and sultry day, towards the close of one of the warmest and most sultry summers which Upper Canada has ever known, an extraordinary trial took place at the court-house in the old town of Niagara. The time was more than threescore years ago, when York was a place of insignificant proportions; when Hamilton could barely be said to have an existence; and when the sites of most of the other towns of the Province whose names are now familiar to us still formed part of the hunting-grounds of the native Indian. The little town on the frontier was relatively a place of much greater importance than it is at present; though its fortunes, even at that early period, were decidedly on the wane, and such glory as it could ever boast of possessing, as the Provincial capital, had departed from it long before. To speak with absolute precision, the date was Friday, the 20th of August, 1819: so long ago that, as far as I have been able to learn, there are only two persons now living who were present on the occasion. The court-room, which was the largest in the Province, was packed to the doors, and though every window was thrown open for purposes of ventilation, the atmosphere was almost stifling. Even a

1819.

stranger, had any such been present, could not have failed to perceive that the trial was one in which a keen interest was felt by the spectators, many of whom were restless and irritable, insomuch that they found it impossible to keep perfectly still, and from time to time shifted uneasily in their places. Whispers, "not loud, but deep," occasionally reverberated from the back benches to the quadrangular space in front assigned to gentlemen of the long robe, and ascended thence to the august presence upon the judgment seat. Ever and anon the stentorian voice of the crier proclaimed silence, in a tone which plainly signified that endurance had well-nigh reached its limits, and that he would really be compelled to proceed to extremities if his mandate were any longer disobeyed.

The court-room was of the old conventional pattern. At the upper end was the large elevated desk, or throne, extending nearly half way across the chamber, with spacious cushioned chairs, and other suitable accommodation for the presiding judge and his associates. To right and left were the enclosed jury boxes, with seats raised considerably above the level of the floor, but not so high as those provided for the justices. Directly opposite the throne of justice, and about six yards distant therefrom, was the prisoners' dock, into which five or six persons might have been thrust, at a pinch. The intervening space enclosed by this quadrangle—throne, prisoners' dock, and jury boxes—was mainly appropriated to the use of barristers and attorneys, and their clients. A large portion of the space so appropriated was occupied by a table, around which were distributed a few chairs, every one of which was occupied; and at the end directly below the judicial throne was a small enclosure provided for the clerk of the court, set apart by a low railing, and containing a desk of diminutive size. Between the clerk's desk and the left-hand jury box was the witness stall, raised to a level with the highest seats provided for the jurors. A seat for the sheriff was placed a short distance to the right of the throne of justice, and on a slightly lower level.

All these arrangements occupied perhaps one-third of the entire court-room. The rest of the space, extending from the rear of the prisoners' dock to the lower end of the chamber, was occupied by seats rising tier

behind tier, with a passage down the middle. Between each of the ends of these seats and the walls of the chamber were passages of about three feet in width, leading to the doors, for purposes of "ingress, egress and regress." Such was the plan of the conventional Upper Canadian court-room in the olden time; and such, with a few inconsiderable modifications, many of them remain down to the present day.

The sole occupant of the judgment seat, on this sultry afternoon, was a gentleman of somewhat diminutive size, but withal of handsome and imposing appearance. Though he had reached advanced middle life, he presented none of the signs of age, and evidently retained all his vigour unimpaired. His eyes were bright and keen, and his small but firm and clearly cut features were lighted up with the consciousness of mental power. No one, looking upon that countenance, could doubt that its owner had all his faculties under strict and thorough control, or that his faculties were considerably above those of average humanity. The face was not one for a child to fall in love with, for it was a perfect index to the character, and was firm and strong rather than amiable or kind. Evidently a man who, should the occasion for doing so arise, would deal out the utmost rigour of the law, if not with indifference, at least without a qualm. He was the Honourable William Dummer Powell, and he occupied the high office of Chief Justice of the Province. In conjunction with the Reverend Doctor Strachan, Rector of York, he had for several years practically directed the administration of affairs in Upper Canada. Francis Gore and Sir Peregrine Maitland might successively posture as figure-heads under the title of Lieutenant-Governors, but the real depositaries of power were the Rector and the Chief Justice. Ominous combination! which falsified the aphorism of a great writer—now, unhappily, lost to us—about the inevitable incompatibility of law and gospel. Both of them had seats in the Executive Council, and, under the then-existing state of things, were official but irresponsible advisers of the Crown's representative. More than one would-be innovator of those days had been made to feel the weight of their hands, without in the least knowing, or even suspecting, whence the blow proceeded. They were the head and front of the junto of oligarchs who formed the Vehmgericht known as the Family Compact, and for all practical purposes their

judgment in matters relating to the dispensing of patronage and the disposal of Crown property was final and conclusive.

The counsel for the prosecution was a handsome young man of twenty-eight, who for some years past had been steadily fitting himself for the important part he was destined to play—that of Mr. Powell's judicial* and political successor in the colony. The time was only ten years distant when he, in his turn, was to become Chief Justice of Upper Canada. The time was still less remote when he was to succeed Chief Justice Powell as Dr. Strachan's most active colleague—as the chief lay spokesman of his party, and the chief lay adviser of successive Lieutenant-Governors. His name was John Beverley Robinson, and his destiny was doubtless sufficiently clear before him on this 20th of August, 1819. He had strong claims upon his party, for he was the son of a United Empire Loyalist, and during the late war with the United States had proved that he was no degenerate scion of the stock whence he had sprung. He had been present at the surrender of Detroit, and had borne himself gallantly at the battle of Queenston Heights. Nor had his party shown any disposition to ignore his claims. On the contrary, they had pushed him forward with a rapidity which would have turned any head with a natural tendency to giddiness. He had been appointed Attorney-General of the Province before he had been called to the bar, and when he was only twenty-one years of age—a special Act of Parliament being subsequently passed to confirm the proceeding. In 1815 he had been appointed Solicitor-General, chiefly in order that he might draw the salary incidental to that office during a two years' visit to England. Soon after his return he had again been appointed Attorney-General, and had early signalized his re-accession to office by his manner of prosecuting certain criminals from the Red River country, who had been placed on trial at York. Those proceedings do not fall within the purview of this work, but it may be said with reference to the young Attorney-General's connection with them that he had proved himself an exceedingly narrow partisan and a docile pupil of Dr. Strachan. He now presented

*Not, however, his *immediate* judicial successor. Mr.—afterwards Sir William—Campbell became Chief Justice in 1825, and Mr. Robinson's succession did not take place until four years later.

himself to take a leading part in one of the most shameless and iniquitous prosecutions that ever disgraced a court of justice. His personal appearance was decidedly prepossessing. His figure, clad in well-fitting garments of the fashionable cut of the period, was light, agile and compact, and his face, rather inclining to narrowness, was surmounted by a high and smoothly-finished brow, beneath which looked out a pair of steel-grey eyes, the usual expression of which was eager and firm, but on the whole not unkindly. His mouth was finely formed, and when he was in a pleasant humour—as indeed he not unfrequently was—his smile was sweet and ingratiating. In intellectual capacity he was considerably in advance of most of his professional brethren of that day, and he had cultivated his natural abilities by constant watchfulness and study. His features, one and all, were well and sharply defined, and he was probably the handsomest man at the Provincial bar.

Several other members of the legal profession, all of them more or less widely known in the forensic, judicial or political annals of the Province, were present. Conspicuous among them was the brilliant but unscrupulous Christoper Alexander Hagerman, who had already taken high rank at the bar, and was destined to be one of the most active and intolerant directors of the oligarchical policy. Archibald McLean, tall and lithe of limb, had then been more than four years at the bar, and he had already given evidence of the high abilities which were to gain for him an honoured seat upon the judicial bench. He had been retained to defend two prisoners at the Niagara assizes, and his presence in the court-room was due to this fact. Another figure at the barristers' table was Samuel Peters Jarvis, his hands yet red with the blood of young John Ridout, ruthlessly shed by him in a duel two years before, and never to be effaced from the tablets of his memory. There, too, sat Henry John Boulton, a young man of much pretension but mediocre intellect, who had been appointed acting Solicitor-General during the previous year, and who united in his own person all the bigotry and narrow selfishness of the faction to which he belonged. He, also, had been concerned in the shedding of young Ridout's blood, having acted as second to the surviving principal in that affair. With this exception his past life had been uneventful, but his future was fated to be marked by

considerable variety of incident, and by actions which even the most favourable judgment cannot regard with unmixed complacency.

The twelve jurymen sat in their places, in the jury-box to the left of the judge. The witnesses summoned on behalf of the Crown were the Honourable William Dickson and the Honourable William Claus, both of whom were members of the Legislative Council of Upper Canada. The former gentleman was an enterprising Scotchman who had settled in Niagara while it was yet known as Newark, where he had first kept a general store, and afterwards practised law and speculation with great pecuniary success. Like the Jarvis above mentioned, he was disfigured by a red right hand, having shot his man in a duel fought in the autumn of 1808 behind the United States fort on the opposite bank of the river. It is fair to Mr. Dickson, however, to say that he was the challenged party, and that the duel was in a measure forced upon him by the barbarous usages of society in those (happily) far-off days. The other witness, Mr. Claus, was at the head of the Indian department at Niagara, the abuses in the administration whereof were notorious. It was well understood throughout the district that Dickson and Claus between them had contrived to make a tolerably good thing out of the Indians, and that they had been concerned in some decidedly shady transactions. If it be true that Heaven helps those who help themselves, certainly both those gentlemen were entitled to look for divine assistance. They possessed and exercised a wide influence throughout the settlements in the Niagara peninsula, as well as at the Provincial capital, and were commonly regarded as being on the high road to great wealth. Two years before the date of the trial forming the subject of the present chapter, Dickson had purchased the whole of the splendid township of Dumfries, comprising 94,305 acres, at a trifle over a dollar an acre; and he had already begun to realize upon his investment. Claus and he occupied seats at the barristers' table, in close proximity to the Attorney-General. The spectators included pretty nearly every prominent resident of the town of Niagara and its immediate neighbourhood.

But the most conspicuous figure in that crowded court-room yet remains to be considered. It has been mentioned that the prisoners' dock was large enough to hold five or six persons. On this occasion it held

but a single, solitary prisoner. A man large and bony, who, when in his ordinary state of health, must have weighed not less than fifteen stone. Just at present he was very far from being in ordinary health, for during the preceding twelvemonth he had undergone sufficient worry and suffering to destroy the life of any man of average vitality. After having successfully defended himself through two criminal trials, he had been cast into prison, where he had languished for more than seven months. During his long confinement he had been subjected to a course of treatment which would have been highly culpable if meted out to a convicted criminal, and which was marked by a malignant cruelty hardly to be comprehended when the nature of the offence charged against him is considered. His own account of the matter is a plain and simple narration of facts, the truth whereof rests upon the clearest and most indisputable evidence. "After two months' close confinement," he writes, "in one of the cells of the jail, my health had begun to suffer, and, on complaint of this, the liberty of walking through the passages and sitting at the door was granted. This liberty prevented my getting worse the four succeeding months, although I never enjoyed a day's health, but by the power of medicine. At the end of this period I was again locked up in the cell, cut off from all conversation with my friends, but through a hole in the door, while the jailor or under-sheriff watched what was said, and for some time both my attorney and magistrates of my acquaintance were denied admission to me. The quarter sessions were held soon after this severe and unconstitutional treatment commenced, and on these occasions it was the custom and duty of the grand jury to perambulate the jail, and see that all was right with the prisoners. I prepared a memorial for their consideration, but on this occasion was not visited. I complained to a magistrate through the door, who promised to mention my case to the chairman of the sessions, but the chairman happened to be brother of one of those who had signed my commitment, and the court broke up without my obtaining the smallest relief. Exasperation of mind, now joined to the heat of the weather, which was excessive, rapidly wasted my health and impaired my faculties. I felt my memory sensibly affected, and could not connect my ideas through any length of reasoning, but by writing, which many days I was wholly unfitted for by the violence of continual headache."

There is a pathos about this plain, unvarnished story that appeals to every heart. That a man, no matter what his crimes, should have his nervous system thus cruelly undermined; that his physical and mental faculties should be slowly but surely filched from him in this deliberate fashion, is an idea not to be borne with composure by anyone whose breast is susceptible to human impulses. But Robert Gourlay was no great criminal. He had engaged in no plot to blow up King, Lords and Commons. He had been guilty of no treason or felony. He had threatened no man's life, and taken no man's purse upon the highway. He was by no means the stuff of which great criminals are made. He was not even a vicious or immoral man. He was an affectionate husband, a fond and indulgent father. His story, from beginning to end, even when subjected to the fiercest light that can be thrown upon it, discloses nothing cruel or revengeful, nothing vile or outrageously wicked, nothing grovelling or base, nothing sordid or mean. On the other hand, it discloses a man of many noble and generous impulses; a man with a great heart in his bosom which could warmly sympathize with the wrongs of his fellow-creatures; a man in whom was no selfishness or greed; a man of decided principles and stainless morals; who was incapable of dishonesty or cruelty; who had a high sense of human responsibility; who feared his God and honoured his King. When we compare his virtuous and honourable, albeit turbulent and much misguided life, with that of any one of his immediate persecutors, the contrast is mournfully suggestive of Mr. Lowell's antithesis about

"Truth forever on the scaffold; wrong forever on the throne."

To what, then, was his long and bitter persecution to be attributed? Why had he been deprived of his liberty; thrust into a dark and unwholesome dungeon; refused the benefit of the Habeas Corpus Act; denied his enlargement upon bail or mainprize; branded as a malefactor of the most dangerous kind; badgered and tortured to the ruin of his health and his reason? Merely this: he had imbibed, in advance, the spirit of Mr. Arthur Clennam, and had "wanted to know."* He had displayed a persistent determination to let in the light of day upon the iniquities and

*"Upon my soul, you mustn't come into the place saying you want to know, you know! You have no right to come this sort of move!"—*Little Dorrit.*

rascalities of public officials. He had denounced the system of patronage and favouritism in the disposal of the Crown Lands. He had inveighed against some of the human bloodsuckers of that day, in language which certainly was not gracious or parliamentary, but which as certainly was both forcible and true. He had even ventured to speak in contumelious terms of the reverend Rector of York himself, whom he had stigmatized as "a lying little fool of a renegade Presbyterian." Nay, he had advised the sending of commissioners to England to entreat Imperial attention to colonial grievances. He had been the one man in Upper Canada possessed of sufficient courage to do and to dare: to lift the thin and flimsy veil which only half concealed the corruption whereby a score of greedy vampires were rapidly enriching themselves at the public cost. He had dared to hold up to general inspection the baneful effects of an irresponsible Executive, and of a dominating clique whose one hope lay in preserving the existing order of things undisturbed. It was for this that the Inquisition had wreaked its vengeance upon him; for this that the vials of Executive wrath had been poured upon his head; for this that his body had been subjugated and his nerves lacerated by more than seven months' close imprisonment; for this that he had been "ruined in his fortune and overwhelmed in his mind." And all these things took place in "this Canada of ours," in the year of grace eighteen hundred and nineteen—barely sixty-six years ago—while the Duke of Richmond was Governor-General, and his handsome scapegrace of a son-in-law nominally administered the government of the Upper Province.

With a view to a clearer understanding of the circumstances which led to this most villainous of Canadian State prosecutions, it will be well to glance at some details of the prisoner's past life.*

Robert Gourlay was the son of a gentleman of considerable fortune—a retired Writer to the Signet—and was born in the parish of Ceres, Fifeshire, Scotland, in 1778. He received an education suitable to his social position, and while at the University of St. Andrews was the fellow-

* For a much more comprehensive account of Mr. Gourlay's life than the one here given, the reader is referred to a sketch by the author of this work in *The Canadian Portrait Gallery*, Vol. III., pp. 240—256.

student and personal friend of young Thomas Chalmers, who afterwards became one of the most eloquent pulpit orators of modern times.* Robert was the eldest son of his parents, and, being heir to the paternal estates, he grew up to manhood with the expectation of one day succeeding to wealth and station in society. He was put to no profession, and after leaving college, devoted himself to no settled pursuit. He was on visiting terms with the resident gentry of his native shire, and took some interest in local military matters. In 1806 he offered to take charge of an expedition for the invasion of Paris, being probably impelled thereto by the mad attempt of Lord Camelford several years before. He was full of energy and robust health, bountiful and generous to the poor of the parish, a practical philanthropist, possessed of great intelligence and a genuine love for his kind; but withal somewhat flighty and erratic, of impetuous temper, deficient in tact and discretion, and given to revery and theorizing. He was, in short, a bundle of contradictions, some of his idiosyncrasies being doubtless inherited from his father, who was a generous and high-minded but unpractical man. The sire would seem to have been conscious of his son's weaknesses. "Robert," he was wont to say, "will hurt himself, but do good to others." The son studied deeply the economical side of the pauper question, and his researches in this direction brought him into intimate relations with that eminent writer Mr. Arthur Young,† at whose suggestion he was appointed to conduct an inquiry into the condition of the poor in England. By virtue of this appointment he travelled, chiefly on foot, through the most important

* More than half a century later the venerable Doctor thus wrote to his old school-fellow: " . . I received your interesting letter . . with no slight emotion of kindness and respect, having ever regarded you as one of the ablest of my fellow-students at St. Andrews; and who, if human life had not been the lottery it is, would have earned by his talents, and merited by his friendly disposition, a place of high and honourable distinction in society."

† The following observations, written concerning Mr. Young by Mr. Gourlay many years afterwards, contain, so far as they go, a singularly accurate portraiture of the Banished Briton himself:—"He was an enthusiast, and of course honest: he was well educated, and a gentleman. In all his voluminous writings a mean sentiment is not to be found. His habit of making free with people's names, and taking liberties with their writings, arose from an uncontrollable ardour in the cause of improvement. . . His inclination to accumulate crude and undigested information, sufficiently evinced in some of his tours, had their full scope: he then lost himself, and bewildered others, in the confusion of detail. I question if he ever had the power of correct abstract reasoning. His imagination was too busy for it: his eye was too ravenous, devouring all within its reach."—*General Introduction to Statistical Account of Upper Canada;* p. xcvii.

agricultural districts of the island, after which he was pronounced by competent authorities to be the best-informed man in the kingdom respecting the poor of Great Britain. As I have said elsewhere: "He was consulted by members of Parliament, political economists, parish overseers, and even by members of the Cabinet, as to the best means for reforming the poor laws, and was always ready to spend himself and his substance for the public good."*

Having married and settled down on one of his father's estates, he took upon himself various offices of public usefulness and philanthropy. His enterprise and public spirit caused him to be much looked up to by the yeomanry of Fifeshire, and he soon came to be recognized as the special champion of the smaller tenantry at agricultural meetings. At one of these meetings he conceived himself to have been discourteously treated by his neighbour, the Earl of Kellie. The discourtesy does not seem to have been of a serious nature, but Mr. Gourlay became irritated to a degree altogether disproportionate to the offence. He wrote and published a pamphlet, in which Lord Kellie was handled with much severity. It was circulated by the author throughout Fifeshire, and widely read; and from this time forward he was much given to taking the public into his confidence respecting his personal grievances. His attack on Lord Kellie, however, weakened his popularity, and in 1809, partly owing to this cause, and partly to his being in temporary ill-health, he accepted a proposal from the Duke of Somerset to become the tenant of a farm belonging to his Grace, and situated in the parish of Wily, in Wiltshire. For a time all went well with him in his new abode. His farm was a model for the emulation of all the landholders in the parish, and his products gained prize after prize at successive agricultural exhibitions. But Mr. Gourlay was nothing if not critical, and certain of his surroundings afforded legitimate grounds for fault-finding. There were many and serious defects in the system of administering the poor-laws of Great Britain in those days, and the administration in the parish of Wily was attended by some specially objectionable features. These erelong became painfully apparent to the keen eyes of Mr. Gourlay, who began to agitate for a reform. He went into the matter with characteristic

* *Canadian Portrait Gallery*, Vol. III., p. 241.

earnestness, and, by dint of constant speechifying and weekly letters addressed to the local newspapers, he soon began to produce an impression. His appetite for agitation grew by what it fed upon, insomuch that he became a confirmed grievance-monger and hunter-up of abuses. The magnates of the county began to look coldly upon him, and even, in some instances, to array themselves in open opposition to him. This only tended still further to arouse the native pugnacity of his disposition, and his attacks upon local abuses and those who upheld them became more and more violent. Now, in all this there can be no doubt that Mr. Gourlay was from first to last chiefly actuated by genuine philanthropy. He certainly had no selfish or pecuniary purpose to serve; and indeed it is hard to conceive of a man less influenced by mercenary motives. His life was passed in a perpetual war against veritable and undoubted evils; but unfortunately his hotheadedness and want of tact prevented him from doing justice to himself and his views. He lacked the calm intellect and patient temper necessary to the successful fighting of life's stern battle, and had the unhappy faculty of generally putting himself in the wrong, even when there could be no doubt that he had originally been in the right. Some of his letters to the newspapers were remarkable for nothing but their indiscretion, violence and bad taste, and he came to be looked upon by the landlords of Wiltshire as a visionary and dangerous man. His own landlord, the Duke of Somerset, was of this way of thinking, and after some remonstrances at second-hand which proved unavailing, his Grace resolved that this "pestilent Scotchman" must be got rid of. A bill in Chancery was filed against him on some pretext or other, with the view of putting an end to his tenancy. Years of irritating and ruinous litigation followed, the ultimate result of which was a decision in Mr. Gourlay's favour. But it was the old story of *Jarndyce* v. *Jarndyce*. The protracted litigation had eaten up the substance of the successful litigant, and upon the promulgation of the decree the Wiltshire Radical was a ruined man. This would have been a matter of secondary importance to the heir of a wealthy Fifeshire laird, but unhappily his father had also come to the end of his resources. Injudicious speculation and the mismanagement of an agent, combined with the necessity of placing a large quantity of

real estate in the market at an inauspicious time, were the causes which led to the bankruptcy of the elder Gourlay, who was stripped of his great possessions and left with a bare subsistence. The son's prospects of inheriting a fortune were thus at an end, and at thirty-seven years of age he found himself almost wholly without means, and with a family of five children and a wife in delicate health dependent upon him for support. The howl of the wolf began to be audible to him; distant, as yet, but still gradually drawing nearer. To his mind, a change of the base of his operations was clearly indicated.

Five years before this time he had acquired a block of land in the Township of Dereham, in the County of Oxford, Upper Canada, where his wife also owned some property. He now began to cast his eyes anxiously towards the setting sun, with a view to the rehabilitation of his broken fortunes. After weighing the matter carefully, he resolved to cross the Atlantic and pay a visit to Canada, in order to ascertain whether it would be prudent to remove his family thither. He seems to have been very deliberate about making up his mind, as he did not set sail from Liverpool until the month of April, 1817, and did not reach Canada until early in June. The country delighted him, more especially the Upper Province; but one with so keen an eye for abuses had not far to look throughout our fair land in those days for subjects of criticism. Having made himself acquainted with some of the most glaring iniquities of the ruling faction, and with the various causes which tended to retard the progress of the colony, he began to liberate his mind by written and spoken utterances such as had not theretofore been heard in the Province. The effect of these appeals to popular sentiment was soon apparent. People who had long smarted silently under injustice did not hesitate to make known their discontent. The disturber of the public tranquillity continued to speak and write, and he made his presence felt more and more from month to month. Having resolved to engage in business as a land agent, and to set on foot a huge scheme of immigration to Canada from Great Britain, he went diligently to work to gather specific and definite information, and to attack one abuse after another. He travelled about the country hither and thither, addressed public meetings, and wrote letters to all the papers that would publish his animadversions. He was

in deadly earnest, and put all the energy of his impassioned nature into his appeals. In commenting upon the delinquencies of public officials he did not mince matters, though I search in vain throughout his voluminous writings for any evidence that he was ever guilty of a misstatement, or even an exaggeration. He regaled his readers and hearers with indubitable facts—facts which, for the most part, were easily susceptible of proof, and which were eminently calculated to arouse public indignation against the harpies who reaped where they had sowed not, and who gathered where they had not strawed.

These proceedings, as may readily be believed, rendered him inexpressibly obnoxious to the Executive, and to the horde of myrmidons who held office at their sufferance. But the cup of his transgressions was not yet full. His next proceeding filled it to overflowing. He addressed a series of thirty-one printed questions to prominent persons in different parts of the Province, asking for topographical and other information. The thirty-first question was so framed that, if truthfully replied to, it was certain to elicit facts which would form the groundwork of damnifying strictures on the principal abuses of the time. "What, in your opinion," asked Mr. Gourlay, "retards the improvement of your township in particular, or the Province in general?" Throughout the Home District the influence of the Compact was sufficient to prevent any replies from being returned to these queries. Elsewhere that influence was partial only, and many answers were received from other districts. The all but invariable reply to the thirty-first question attributed the slow development of the country to the Crown and Clergy Reserves. Mr. Gourlay did not attempt to conceal his intention of publishing the results of his investigations, and of circulating them all over Great Britain and Ireland. Having succeeded in arousing a good deal of popular enthusiasm, he proceeded to strike what he intended to be another damaging blow. Owing to his exertions, a convention was held at York, whereat he advocated a petition to the Imperial Parliament, praying for an investigation into the public affairs of Upper Canada. He also suggested the sending of deputies to England in support of the petition, and it is not improbable that such a course would eventually have been followed, but the petitioners were as yet not fully organized, and before any of their plans could be brought to

maturity their champion's career of agitation received a sudden and, for the time, an effectual check.

The oligarchs had taken alarm. If this man were permitted to go on as he had begun, there would soon be an end of the existing order of things, which they had so tremendous an interest in preserving. At any cost, and by whatever means, he must be suppressed. There must be a general and determined advance against him all along the line.

The prime organizer of this most unrighteous crusade is believed to have been the Reverend Dr. John Strachan, Rector of York, member of the Executive Council, supreme director of the lay and ecclesiastical policy of the Church of England in Upper Canada, champion of the Clergy Reserves, and what not. It may seem a thankless task to write in strong depreciation of a man who, in his day and generation, was looked up to with reverence by a large and influential portion of the community, and whose memory is still warmly cherished by not a few. But truth is truth, and the simple fact of the matter is that Dr. Strachan did more to stifle freedom and retard progress in Upper Canada than any other man whose name figures in our history. His baneful influence made itself felt, directly or indirectly, in every one of the public offices. Wherever liberty of thought and expression, whether as affecting things spiritual or temporal, ventured to lift its head, there, bludgeon in hand, stood the great Protestant Pope, ready and eager to strike. It may perhaps be conceded that he acted according to his earnest convictions. So, doubtless, did Philip of Spain and Tomas de Torquemada. It is not going too far to say that Dr. Strachan was utterly incapable of seeing more than one side of any question involving the interests of himself and his church. When his cause was a just one, who so fond as he of appealing to the majesty of the law. When he wished to pervert the law to his own purposes, who so apt at enjoining a disregard therefor.* There is abundant reason for believing that he was the original instigator of the Gourlay prosecutions. They were at all events carried on by his satellites, and fostered by his fullest concurrence and approval. Their

* *Ex. gr.* :—"The law! the law!" impatiently exclaimed the Reverend Doctor, in his most strident vernacular, when the question of Barnabas Bidwell's expulsion from the Assembly was under discussion in his hearing—"Never mind the law; toorn him oot, toorn him oot."

object was to drive Mr. Gourlay out of the country, and to this end it would appear that the Compact were prepared to go whatever lengths the necessities of the case might require. A criminal prosecution for libel was set on foot against the doomed victim of Executive malevolence, who was arrested and thrown into jail at Kingston, where he lay for some days. The trial took place on the 15th of August, 1818, when Mr. Attorney-General Robinson put forth the utmost power of his eloquence to secure a conviction. In vain. The prisoner conducted his own defence, and so clearly exposed the flimsiness of the indictment that the prosecution utterly failed. A second arrest on a similar charge resulted in another acquittal at Brockville. It was by this time manifest that no jury could be found subservient enough to become blind instruments of oppression. The alleged libel consisted of two paragraphs in a petition to the Prince Regent, drafted by Mr. Gourlay, approved of, printed and published by sixteen residents of Niagara District, six of whom were magistrates. These paragraphs contained a vivid but faithful picture of the abuses existing in the Crown Lands Department, and it would probably have been difficult to find a jury anywhere in Upper Canada, some members whereof had not had personal experience of those abuses. Having failed in two attempts to convict him of libel, Mr. Gourlay's foes hit on another and more effectual method of accomplishing his destruction.

By a Provincial statute known as the Alien Act, passed in 1804, authority was given to certain officials to issue a warrant for the arrest of any person not having been an inhabitant of the Province for the preceding six months, who had not taken the oath of allegiance, and who had given reason for suspicion that he was "about to endeavour to alienate the minds of His Majesty's subjects of this Province from his person or government, or in anywise with a seditious intent to disturb the tranquillity thereof." In case the person so arrested failed to prove his innocence, he might be notified to depart this Province within a specified time, and if he failed so to depart he was liable to be imprisoned until he could be formally tried at the general jail delivery. If found guilty, upon trial, he was to be adjudged by the court to quit the Province, and if he still proved contumacious he was to be deemed guilty of felony, and to suffer death as a felon, without benefit of clergy.

This statute, be it observed, was not passed at Westminster during the supremacy of the Plantagenets or the Tudors, but at York, Upper Canada, during the forty-fourth year of the reign of George the Third. More than one eminent authority has pronounced it an unconstitutional measure. There was, however, some show of justification for it at the time of its enactment, for the Province was then overrun by disloyal immigrants from Ireland and by republican immigrants from across the borders, many of whom tried to stir up discontent among the people, and were notoriously in favour of annexation to the United States.* It was against such persons that the Act had been levelled, and there had never been any question of attempting to apply it to anyone else. Now, however, it was pressed into requisition in order to compass the ruin of as loyal a subject as could have been found throughout the wide expanse of the British Empire; who had resided in Upper Canada for a continuous period of nearly eighteen months; who was no more an alien than the King upon the throne; and whose only real offence was that he would not stand calmly by while rapacious and dishonest placemen carried on their nefarious practices without protest.

Among the various dignitaries authorized to put the law in motion, by the issue of a warrant under the Act, were the members of the Legislative and Executive Councils. William Dickson and William Claus, as has been seen, were members of the former body; and as such they had power over the liberty of anyone whose loyalty they thought fit to call in question. Dickson was a connection by marriage of Mr. Gourlay, and for some months after that gentleman's arrival in this Province had gone heart and hand with him in his schemes of reform. For Mr. Dickson then had a grievance of his own, arising out of the partial interdict of immigration from the United States which had been adopted after the War of 1812-'15. He was the owner of an immense quantity of uncultivated land in the Province, including the township of Dumfries already men-

* "The local situation of Upper Canada exposes it to the inroad of aliens of all nations, who, having no tie of allegiance or affection to Britain, may thence be suspected of evil designs; and for that reason terrors may be held out to keep them at a distance; but for British subjects to be suspected and made liable to penalties on mere suspicion, is contrary at once to nature and the spirit of our constitution. It is more especially absurd when we consider that the law was expressly made for *their* protection."—*General Introduction to Statistical Account of Upper Canada*, p. lxviii.

tioned, which he was desirous of selling to incoming settlers. The shutting out of United States immigrants tended to retard the progress of settlement and the sale of his property. His anger against the Administration had been hot and bitter, and he had even gone so far as to state publicly that he would rather live under the American than under the British Government. But he had managed to induce the Assembly to pass certain resolutions, recognizing the right of subjects of the United States to settle in Upper Canada. The restrictions being relaxed, his only cause of hostility to the Administration vanished, and he ceased to clamour against it. His sympathy with Mr. Gourlay's projects vanished into thin air. Those projects contemplated enquiry and reform. Dickson, having accomplished his own ends, desired no further reform; and as for enquiry, he had excellent reasons for burking it, as it would probably lead to the disclosure of certain reprehensible transactions on the part of himself and Claus, the Indian agent. He therefore presented a sudden change of front, and, so far from continuing to act with Mr. Gourlay, he became that unfortunate man's bitterest foe.

How far Dickson's enmity was stimulated by coöperation with the leaders of the Compact party at York will probably never be known. That there was something more than a merely tacit understanding that Mr. Gourlay was to be got rid of is beyond question. But before any arrest could be effected under the Act of 1804 it was necessary that perjured testimony should be forthcoming. It was easily provided. On the 18th of December, 1818, a secret consultation took place between Dickson and one Isaac Swayze, at the former's private abode. Swayze was a resident of the Niagara District, and the representative of the Fourth Riding of Lincoln in the Legislative Assembly, but was nevertheless a man of indifferent character, and so illiterate as to be barely able to write his name. During the Revolutionary War he had been a spy and "horse-provider" to the loyalist troops. More recently he had been chiefly known as one of the most bigoted and unprincipled of the Compact's minor satellites; a hanger-on who was ever ready to undertake any disreputable work which the Executive might have for him to do. He was a smooth-tongued hypocrite, who made extravagant professions of zeal for religion when he was in the society of religious people, but after-

wards laughed at their credulity for believing him. "When electioneering," said he, "I pray with the Methodists." At other times he gained votes by threatening to bring down upon the electors the vengeance of the Executive, who, he averred, were specially desirous of having his services in the Assembly. Corruption can always find apt tools to do its bidding.

> "Where'er down Tiber garbage floats, the greedy pike ye see;
> And wheresoe'er such lord is found, such client still will be."

Isaac Swayze was a veritable modern counterpart of the client Marcus, and when he gained votes by holding his patrons *in terrorem* over the heads of the electors, he was merely echoing his ancient prototype:—

> "I wait on Appius Claudius, I waited on his sire;
> Let him who works the client wrong beware the patron's ire."

His employers knew their man, and that he would not stick at a trifle to keep their favour. On the day after his secret interview with Dickson he proved his subordination to authority by committing wilful and deliberate perjury. He swore that Mr. Gourlay was an evil-minded and seditious person, who was endeavouring to raise a rebellion against the government of Upper Canada; that he, deponent, verily believed that said Gourlay had not been an inhabitant of the Province for six months, and had not taken the oath of allegiance.*

On the strength of this sworn statement, Mr. Gourlay was arrested under the Alien Act of 1804, and carried before Dickson and Claus, both of whom were specially and personally interested in putting him to silence. The examination and hearing before them, which took place on the 21st of December, was a transparent mockery of justice. Dickson, Claus and Swayze, in common with nearly every one in Upper Canada, well knew that their victim had been resident in the Province for nearly three times the period specified in the Act. Dickson had been in constant and familiar

* Seven or eight years after this time Swayze narrowly escaped prosecution for the murder of Captain William Morgan, who is presumed to have been slain for his threatened disclosure of the Masonic Ritual. Swayze openly boasted that he had been concerned in the abduction of Morgan, and in the execution of Masonic vengeance upon him. He professed to be able to indicate the precise spot where the body was buried—which spot, he declared, was not far from the bottom of his garden. Upon investigation these vainglorious boastings proved to be utterly without any foundation in fact.

intercourse with him for sixteen months. Claus had known him nearly as long. Swayze had conversed with him at York more than a year before, and had been acquainted with his proceedings from month to month—almost from week to week—during the entire interval. The charge of being an evil-minded and seditious person was too absurd to be seriously entertained for a moment by any one who knew Mr. Gourlay as intimately as Dickson had done for more than eight years.* As for his not having taken the oath of allegiance, it had never been required of him, and he was both able and willing to take it with a clear and honest conscience. But as matter of fact no one suspected his loyalty, and the charge against him was the veriest pretext that malice could invent. When he appeared before his judges, however, Messieurs Dickson and Claus professed to be dissatisfied with his defence, and alleged that his "words, actions, conduct and behaviour" had been such as to promote disaffection. They accordingly adjudged that he should leave the Province within ten days. A written order, signed by them, enjoining his departure, was delivered to him. "To have obeyed this order," writes Mr. Gourlay,† "would have proved ruinous to the business for which, at great expense, and with much trouble, I had qualified myself. It would have been a tacit acknowledgment of guilt, whereof I was unconscious. It would have been a surrender of the noblest British right; it would have been holding light my natural allegiance; it would have been a declaration that the Bill of Rights was a Bill of Wrongs. I resolved to endure any hardship rather than to submit voluntarily."

He paid a heavy penalty for his disobedience. On the 4th of January, 1819—the third day after the expiration of the period allowed him for departure—Dickson and Claus issued an order of commitment, under which he was arrested and lodged in Niagara jail, there to remain until the next sitting of the Court of Oyer and Terminer. His pugnacity was by this time fully aroused, and he determined to fight his ground inch by inch. After some delay, he caused himself to be taken before Chief

* Dickson had originally made Gourlay's acquaintance in 1810, when he visited and spent a week with him at his farm in Wiltshire. See Gourlay's *Statistical Account of Upper Canada*, Vol. 2, p. 494.

† *General Introduction to Statistical Account of Upper Canada*, p. ix.

Justice Powell, at York, under a writ of *habeas corpus*, for the purpose of being either discharged from custody or admitted to bail. The argument was heard on the 8th of February, when several persons of wealth and good social position presented themselves, and offered to become responsible to any amount for his appearance whenever called upon to stand his trial. The attorney who argued the cause on behalf of the prisoner presented three affidavits, made respectively by the Honourable Robert Hamilton, Peter Hamilton, and the prisoner himself, who, in order to render his position doubly unassailable, had meanwhile taken the oath of allegiance. In the first affidavit it was deposed that Mr. Gourlay had been domiciliated at Queenston for more than nine months, and that the deponent verily believed him to be a natural-born subject of Great Britain. By the second it appeared that deponent had known Mr. Gourlay in Britain, where he was respected, esteemed, and taken to be a British subject; "and that he is so"—thus ran the affidavit—"this deponent verily believes is notoriously true in this district." The prisoner's own affidavit set forth that he was a British subject; that he had taken the oath of allegiance, and that he had been an inhabitant of Upper Canada for more than a year prior to the date of the warrant first issued against him. There could hardly have been a clearer case. But the prisoner's enlargement at this time would have been a triumph for him, and would have made him a popular idol, which would not have comported with the policy of the Unholy Inquisition at the capital. He was remanded to jail, the Chief Justice indorsing judgment on the writ to the effect that the warrant of commitment appeared to be regular, and that the Act under which it was issued made no provision for bail or mainprize.

When Mr. Gourlay was first placed in durance at Niagara he was possessed of robust health, a vigorous frame, a seemingly unconquerable will, and a perfervid enthusiasm for the cause of truth and justice. But his sufferings during the ensuing six months were of a nature well calculated to sap the health of the most robust, to rack the frame of an athlete, to tame the wildest enthusiasm, and to subjugate the strongest will. When we read of what the gentle and erudite John Fisher or the eloquent and upright Sir John Eliot underwent in the Tower for conscience sake, the heart's blood within us is stirred with righteous indignation. But we

are calmed by the reflection that these things took place centuries ago, and in a far-distant country. In the case of Robert Gourlay we can lay no such flattering unction to our souls. His slow crucifixion was accomplished in our own land, and at a time well remembered by many persons now living among us. Some idea of what he passed through may be derived from his own words already quoted. Further light on the subject may be obtained from noting his demeanour when placed on trial, as the reader will presently have an opportunity of doing.

For some months after his incarceration his fine state of health and exuberant animal spirits kept him from utterly breaking down. His whole nature was up in arms at the wrongs he had sustained, and his pugnacity asserted itself as far as his circumstances would admit of. He obtained the opinions of eminent English lawyers as to the legal aspect of his case. The unanimous opinion of counsel was that his imprisonment was wholly unjustifiable. Sir Arthur Piggott was clear that Chief Justice Powell should have discharged the prisoner when brought before him under the writ of *habeas corpus*, and that Dickson and Claus were liable to actions for false imprisonment. This opinion was acted upon, and proceedings were instituted against the two last-named personages. But the contest was too unequal. Each of the defendants obtained an order for security for costs, which security the plaintiff, being in confinement, and subject to various disabilities, was unable to furnish. The actions accordingly lapsed, and Dickson and Claus thus escaped all civil liability for their most reprehensible deeds.

The thread of the narrative may now be resumed pretty nearly where it was dropped a few pages back. It was, as has been said, the 20th of August—nearly a year subsequent to the Kingston trial*—when the prisoner was finally placed in the dock to undergo the semblance, without the reality, of a judicial investigation into his conduct. He was himself firmly persuaded that the jury empannelled in his case was a packed one. We have no means of knowing all the circumstances whereby he was led to this conclusion, but the idea is not in itself inherently improbable. In those days, and for long after, no man tried in Upper Canada for anything savouring of radicalism in politics could hope to

* In these times there was but one jail delivery per annum in Upper Canada.

receive fair play. In Gourlay's case there were one or two suspicious features which, to say the least, require explanation. The custom ordinarily adopted by the sheriff, in selecting jurymen, was to draw them in rotation from the various townships in the district. "In my case," says Mr. Gourlay, "it was said that he had varied his course; and not this only, but, instead of drawing from a square space of country, he chose a line of nearly twenty miles, along which it was well known that there were the greatest number of people prejudiced and influenced against me."* Mr. Gourlay further declares that it was observed by people in court that in the glass containing the folded transcripts from the jury-list some of the folded papers were distinctly set apart, so as to admit of their being drawn, apparently with fairness, in the ordinary manner. These papers so set apart from the rest, as Mr. Gourlay informs his readers, were "caught hold of" as the twelve which should decide his fate. The names of the jurors, which, so far as I am aware, have not hitherto appeared in print, are worthy of preservation. They were William Pew, John Grier, William Servos, James B. Jones, Ralfe M. Long, David Bastedo, John C. Ball, John Milton, James Lundy, William Powers, Peter M. Ball and John Holmes.

The personal appearance of the prisoner had undergone a woful change during his confinement. Had his own wife seen him at that moment it is doubtful whether she would have recognized her lord. Could it be possible that that frail, tottering, wasted form, and that blanched, sunken-eyed, imbecile-looking countenance were all that were left of the once formidable Robert Gourlay? The sight was one which might have moved his bitterest enemy to tears. His clothing, a world too wide for so shrunken a tenant, hung sloppy and slovenly about him, and it was remarked by a spectator that he had aged fully ten years during the six months that had elapsed since his journey to York in the previous February. His limbs seemed too weak to support him where he stood, and as he leaned with his hands upon the rail in front of him his fingers

* *Statistical Account*, Vol. II., p. 342. In a note to p. xv. of the *General Introduction*, Mr. Gourlay says further: "The jury in this case was notoriously packed. To guard against the effects of this as much as possible, I had, in the expectation of trial for libel, obtained lists of inimical jurymen, and had people willing to appear in court to swear that many of them had prejudged me openly, in the rancour of party dispute. These lists were handed to me through the door, before and during the assizes; but all caution and care forsook me in the time of need."

twitched nervously, while his whole frame visibly trembled. The saddest change of all had been wrought in his once fine eyes. They were of light grey, and their ordinary expression had been more sharp and piercing than is commonly found in eyes of that colour. They had been clear and keen, and expressive of an active, vigorous brain behind them. At present they were wandering, weak and watery, altogether lacking in lustre or expression. They told their sad tale with piteous brevity. The brain was active and vigorous no longer, or, if still active, was so to no definite purpose. The spark of reason was for the time quenched within him. His oratory and his writings were no longer to be dreaded. The man whose large presence had once carried about with it unmistakable evidences of physical and mental power had been reduced to a physical and mental wreck. No man in that closely-packed court-room was now more harmless than he. The Compact had indeed set an indelible mark upon him—a mark which he was to carry to his grave, for during the forty-four years of life that remained to him he was never again the Robert Gourlay of old, and was subject to periodical seasons of mental aberration.

And yet, as he stood there trembling and distraught, with that sea of faces turned upon him, he was not altogether without some glimmering of reason. He was at least passively conscious, like one in a troubled dream, of what was going on around him. He realized, in a misty, dazed sort of fashion that he was on his trial; but, cudgel his memory how he would, he could not recall the nature of his alleged offence. The fact is that, though no stimulant had passed his lips, he was in a state that can only be characterized as one of intoxication. We know, on undoubted authority, that very emotional persons are sometimes intoxicated by a plate of soup, and that invalids have become tipsy upon eating their first beefsteak after convalescence. Mr. Gourlay was endowed with an enthusiastic, exuberant nature, which required to be kept in subjection by abundant exercise. Up to the time of his imprisonment he had led an active out-of-door life, whereby the demon of nervousness within him had been kept at bay. But long-continued confinement in a close cell, deprivation of fresh air and suitable exercise, had hindered his exuberance from finding vent. His mind had

been thrown back upon itself. He had not been permitted to confer with his friends, except under such restrictions as made converse intolerable. He had been kept in such a state of nervous tension that he had had no appetite, and had eaten scarcely any food. His sleep had been broken by mental discomfort, and he had sometimes lain the whole night through without a minute's unconsciousness. What wonder that his flesh had sunk away from his bones, and that his frame had lost its elasticity! For some hours every day he had lain prostrate on the bed in his cell, in a state of feebleness pitiful to behold, unable to speak or move, and hardly able to breathe. "One morning," he writes, "while gasping for breath, I besought the gaoler to let me have more air, by throwing up the window. 'You are no gentleman,' said he; 'you gave that letter* out of the window, and I will come presently to nail it down.' Happily a friend soon after called upon me, and through his interference the window was put up. The brutal gaoler had never before been uncivil to me . . but there is a spirit throughout animal nature, brute and human, to oppress in proportion as opportunity is safe, and the object defenceless. The wounded stag, and the close prisoner of a Provincial Government, experience similar treatment."†

The summer heat, as before mentioned, had been excessive. No rain had fallen for weeks until just before the opening of the assizes, when there had been three days of damp, cool weather. During these three days the prisoner's strength had rallied wonderfully, and he had been able to prepare a written defence, as well as a written protest against the legality of his trial, in case of a hostile verdict. But the exertion had been too much for him in his enfeebled condition, and, as though to add to his miseries, the heat had become more intolerable than before. He had not known how utterly his nerves were shattered until his case had been called for trial, and he had been placed in the prisoners' dock. Hot and stifling as was the air of the court-room, it was balm itself when compared with the vitiated element which he had long been forced to

* Referring to a letter written to attract sympathy to the case of the editor of the Niagara *Spectator*, who had been imprisoned and shamefully abused for publishing several of Mr. Gourlay's criticisms. Some account of the persecution to which this gentleman was subjected will be found on a future page.

† *Statistical Account*, Vol. 2, pp. 393, 394.

breathe. The stimulus was too great, and he was no longer master of himself. To quote his own words, he became rampant with the fresh air, and was reduced to imbecility at the very moment when he specially needed strength, patience and recollection. Such was his condition when Mr. Attorney-General rose from his seat and proceeded to lay bare the prisoner's unspeakable enormities. It had been determined that no attempt should be made to convict him of sedition, and that the only charge to be pressed against him should be his refusal to leave the Province. The indictment, however, was read and commented upon, doubtless for the purpose of influencing the minds of the audience. It charged, with wearisome iteration and reiteration, that he, the said Robert Gourlay, being a seditious and ill-disposed person, and contriving and maliciously intending the peace and tranquillity of our lord the King within the Province of Upper Canada to disquiet and disturb, and to excite discontent and sedition among his Majesty's liege subjects of this Province—and so forth, and so forth, to the end of the tedious and tautological chapter. The patriotic and disinterested conduct of Dickson and Claus, in performing the imperative but unpleasant duty of committing their personal friend to jail, lest he should undermine the loyalty of the people, was commented upon with periphrastic eloquence. When the official inquiry was put to the prisoner: "How say you, Robert Gourlay, are you guilty or not guilty?" he instinctively replied "Not guilty." Then came the next query: "Are you ready for your trial?" Ready for his trial, indeed! when his helpless condition was apparent to everybody who could catch a glimpse of his tottering frame and his vacant, expressionless face. The unmeaning sound which issued from his lips was taken for an affirmative, and the farce of an impartial investigation proceeded with.

During the whole of these proceedings the prisoner stood like one amazed and confounded; as one who gropes blindly in the dark for what he cannot find. From the various hints scattered here and there throughout his numerous writings, we are able to form some idea of what he underwent during that trying ordeal. His imagination had been rendered more lively by weakness and prostration of body, and he was so stimulated by the change of air from his cell to the court-room that his

sensations were chiefly those of a vague and unreasoning delight—delight at the prospect of freedom; delight at the prospect of once more enjoying the luxury of heaven's sunlight unimpeded by the bars of a prison cell; of running rampant through the land, and feeling upon his sunken cheeks the deliciously invigorating air of the open fields. His high spirit had been effectually tamed by that rigid, excruciating torture of close confinement during the dog days, with no other companion than despair. By this time personal liberty and fresh air seemed to him the only things greatly to be desired. He was cognizant of a sensation of thankfulness that his trial had come on at last, even though it should result in his banishment. He rejoiced that he should even thus be set at liberty from his horrible situation.* He longed to feel the tide of human life ebbing and flowing around him, and to feel that he himself was not a mere drone in the hive. During the progress of the trial, though he was oblivious of most that was going on in the court-room, memory and fancy were keenly alert, and he rapidly lived over again many episodes of his past life. The dead and gone years rose up before him like the scenes of a rapidly-shifting panorama, even as the past is said to arise before the mental vision of those lying on beds of pain, just before the great mystery of the grave is unfolded to their view. Subjects and scenes long forgotten or seldom remembered presented themselves. There was the little Fifeshire school, with its umbrageous playground, where he had been a merry laughing lad, and where Dominie Angus had given him his first taste of ferule and Fotherup. There was the patched portrait of Cardinal Beaton, in St. Mary's College, at which he and his friend John Dean had been wont to gaze with rapt admiration in the old days left so far behind. There was that odd adventure among the Mendip Hills, during his professional peregrination through Somersetshire more than a dozen years before, and upon which he could not remember that he had bestowed a single thought since his arrival in Canada. There, too, was the drunken type-setter from Bristol, who had taught him the technical marks to be used in making corrections for the press, and whom he had neither seen nor thought of since the publication of his pamphlet in which he had portrayed the sufferings of Bet Bennam and Mary Bacon. Who shall say what other

* *General Introduction*, p. xv.

scenes, sad or mirthful, presented themselves among his "thick-coming fancies"? Possibly he recalled the high hopes of his boyhood, when he thirsted to better the condition of the poor, and was almost persuaded that he had been sent into the world expressly to guard their interests against the exactions of grasping landlords. Visions, too, may have arisen before him of his beautiful Wiltshire farm, where the modest daisies peeped above the grass, and the joyous lark sang from the meadow; where he had once been so happy in the companionship of his fond wife and little ones, who at this moment waited in longing expectation for tidings from the absent husband and father. Perchance also he called to mind, at that crisis, his little dead daughter, who had blossomed and faded among the green glades of Wily, and over whose grave the parson of the parish had refused to read the services of the Church.* The poor babe had died unchristened, and under such circumstances the rubric forbade the solemnization of funeral rites.

From all such musings he was recalled by the voice of Chief Justice Powell, demanding if he had aught to say ere the sentence of the court should be pronounced upon him. The sentence of the court! For the best part of two hours he had been wool-gathering, and the words beat upon his brain without arousing any just appreciation of their significance. He now once more awoke to the fact that he was on his trial, but he could not grasp the potentialities of his situation, nor could he for the life of him recall the precise nature of the offence with which he had been charged. He did, however, realize that the jury had returned a verdict to the effect that he had been guilty of refusing to leave the Province, pursuant to the order served upon him. By a desperate effort he managed to rally his senses sufficiently to remember that he had been accused of being a seditious person, though whether the accusation had been made yesterday, or the day before, or half a century ago, he was wholly unaware. Turning towards the jury-box, he enquired of the nearest occupant whether he had been found guilty of sedition. Suddenly it flashed across him that he had prepared a defence, together with a written protest against the anticipated verdict. But by no mental exertion of which he was capable could he remember what he had done

*General Introduction, pp. ccviii., ccix., and note.

with the defence, nor could he call to mind the word "protest," although at that moment he had the written one in his pocket. After a moment's struggle to remember what he wished to say, he found himself hopelessly befogged, and abandoned the attempt. Then, to the amazement of all who heard him, he burst out into a loud, strident peal of unmeaning, maniacal laughter—laughter which had no spice of merriment in it, and which was a mere spontaneous effort of nature to relieve the strain upon the shattered nerves. Bench, bar, jury and spectators stared agast. Such laughter sounded not only incongruous, but sinister, ominous. It was suggestive of the expiring wail of a lost soul. It was more eloquent than any mere words could have been, and spoke with most miraculous organ. Over more than one heart there crept a sort of premonition that a dread reckoning must sometime arrive for that day's work: that Eternal Justice would sooner or later exact a fit penalty for the cruel perversion of right which was then and there being consummated. It would be interesting to know what, at that particular moment, were the innermost sensations of William Dickson and William Claus, both of whom sat within a few feet of their victim, and both of whom had repeatedly received offices of kindness at his hands.

Strange to say, the miserable man's memory was merely suspended, and he afterwards recalled with much clearness the thoughts and reflections which passed through his mind during that delirium of more than two hours. He even remembered the senseless bray of laughter which, to the sympathetic mind, is not the least impressive feature of that iniquitous trial. His overwrought nerves being temporarily relieved by the cachinnation, he regained for a few minutes some measure of composure and sanity. With the return of reason came a returning sense of injustice and oppression. He made a brief but ineffectual attempt to argue the matter with the Chief Justice, who informed him that the facts had been dealt with by the jury, and that he could be permitted to speak only on questions of law. The sentence of the Court was then pronounced. It was to the effect that the prisoner must quit the Province within twenty-four hours. He was reminded of the risk he would run in the event of his presuming to disobey, or to return to Upper Canada after his departure therefrom. He would be liable, according to the words of

the Act of 1804, to suffer death as a felon, without benefit of clergy. The Chief Justice finally proceeded to read him a severe lecture upon his past course since his arrival in Canada, and furthermore to give him some excellent advice. He informed him that in this country the law is supreme; that no man can be permitted to run counter to it with impunity; that those who administer the law should be no respecters of persons; that justice is even-handed, and metes out impartially to the poor man and the rich. He advised him to turn his great abilities to practical account, whereby he would no doubt win happiness and distinction. "Perhaps," says George Eliot, "some of the most terrible irony of the human lot is to hear a deep truth uttered by lips that have no right to it." Poor Gourlay was conscious of some feeling of this sort when he heard such truths proclaimed from such lips. To his morbidly-sensitive nature, such irony seemed an aggravation of all he had endured. To think that, after such experiences as had fallen to his share, a Family Compact judge should gravely inform him that in Upper Canada the administrators of the law should be no respecters of persons! that justice is even-handed! To think that such an one should presume to advise him to become practical, with a view to wealth and happiness! It was like the adulterous woman who, on eloping with her paramour, wrote to her husband enjoining him to be virtuous if he would be happy. The incongruity struck the prisoner so forcibly that for a moment he was on the verge of another explosion of sardonic laughter. Before leaving the dock he made one last attempt to draw attention to the treatment he had sustained while in prison. By way of heightening the effect of his narration, he informed the Court that his letters had been suppressed by the sheriff:* that while his enemies had been allowed to fill the newspapers with lying diatribes against him, and to prejudice the public mind in view of his impending trial, his own letters to the Niagara *Spectator* had been

* The sheriff was Thomas Merritt, father of the gentleman who afterwards became the Hon. William Hamilton Merritt, to whose enterprise, more than to that of any other man, we owe the Welland Canal. It is right to add that most of the subordinate duties of the office of sheriff were discharged by an underling, and that Thomas Merritt may have been personally free from blame in respect of Mr. Gourlay. Assuming him to have been blamable, his son, the Hon. W. H. Merritt, in after days, did his utmost to atone for it by espousing Mr. Gourlay's cause in the Canadian Assembly, as will be seen by reference to the Parliamentary debates of 1856, 1857 and 1858.

rigidly withheld from the light of day, and this by official interference. Chief Justice Powell put the cap-sheaf upon the pinnacle of absurdity by informing him that if he chose he might prosecute the sheriff. Prosecute the sheriff! when he had just been sentenced by the Chief Justice himself to leave the Province within twenty-four hours, and when he was liable to the last penalty of the law in case of his return to prosecute!

The trial was ended, and—blissful thought!—for the ensuing twenty-four hours he was free to come and go whithersoever he would. He was taken in charge by his friends the Hamiltons, and spent the night in their house at Queenston. Next day—Saturday, the 21st of August—he obeyed the mandate of the law, and shook from his feet the parched dust of Upper Canadian soil. His mental condition was far from satisfactory, but he would brook no interference with his actions, even from his best friends. The feeling uppermost in his bosom was a delicious sense of being at large, with no one to shut the cell door upon him, or otherwise to control his actions. He felt like one recalled to life. The unhappy man was well aware that his brain was weak, but he also knew that he was not what is ordinarily understood as insane. Like Baldassarre, he carried within him that piteous stamp of sanity, the clear consciousness of shattered faculties. His feebleness was as patent to himself as to others. He knew that he was the mere wreck of what he had once been, and he knew further that his mental and bodily ruin was due to the triumph of tyranny and injustice. Still, he was, for the moment, happy. There was sunshine in his heart, and gladness in his eye. Having crossed the Niagara river, he knew that he was beyond the material grasp of those whose baneful shadow was nevertheless destined to darken the rest of his life. "I thanked God," he writes, several years afterwards, "as I set my first foot on the American shore, that I trod on a land of freedom. The flow of animal spirits carried me along for more than two miles in triumphant disgust. It carried me beyond my strength, till, staggering by the side of the road, I sunk down, almost lifeless, among the bushes, and awoke from my dream to a state of sensibility and horror past all power of description. If at my trial, and so long after it, I was callous to feeling; if I was blind to objects around me, and regardless of consequences, the scenes I had passed through were now too visible: my

senses were too keen; my feelings too acute. Before, all was frozen and rigid; now, extreme relaxation resigned me to the torture of a distracted mind, feeble, doubting, and irresolute. In fact, my nervous system had undergone a most violent change; and, to this hour, the effects are permanent: to this hour, with every effort and every appliance, my natural tone of health and vigour cannot be regained."*

One of the bitterest reflections which forced itself upon him was that he, a man of unimpeachable loyalty, had been banished—"flung out like a spoilt jelly,"† under a statute which had been passed to guard against the machinations of aliens and traitors. "Banishment" was to him a word replete with repulsive and disgraceful associations. He liked it no better than did the sweet rose of the Capulets.

"Banished: that one word—*banished.*

. . . . . .

There is no end, no limit, measure, bound,
In that word's death."

* * * * * * *

On the 27th of August, precisely a week after the trial above described, a high and mighty English nobleman who was for the time domiciled in Canada underwent a more terrible experience than ever fell to the lot of Robert Gourlay. He was travelling at the time through a part of the county of Carleton, and while wandering through the woods, attended by several companions, he found himself exceedingly unwell. His spirits were depressed, and he was dominated by what seemed an unaccountable dread of water. His valet had noticed that for a day or two previously he had shrunk from performing his customary ablutions, and had cleaned his hands and face by the application of a damp towel. On approaching within a few yards of a forest stream he was seized by violent spasms. By a desperate resolution he forced himself to take his seat in a canoe which had been provided, but the little craft had not proceeded many yards ere he was seized by a fresh paroxysm, and in a frenzied tone ordered the boatman to land him on the nearest bank. The order was promptly obeyed, and he had no sooner escaped from the boat than he ran frantically into the depths of the wood. He was pursued and overtaken by his companions, who found him foaming at the mouth and raving mad. They

* *Statistical Account*, Vol. II., pp. 400, 401. † Ib., p. 401.

secured him until the paroxysm had spent itself, when they conveyed him to a neighbouring shanty. The sufferer, at his own request, was soon after removed to an adjoining barn, where he said he should be more comfortable than in the shanty, as it was *further from the water*. Throughout the rest of the day and ensuing night he was subject to repeated returns of the paroxysms, during which he suffered untold agonies. It was evident to himself and those about him that he was afflicted by the most terrible of all maladies to which humanity is subject—hydrophobia. He had been bitten by a tame fox a few weeks before, and the deadly rabies had ever since been rankling in his system. He realized that he must die, and the instincts of his race—he was a remote by-blow of royalty—taught him to make an ending in a manner becoming a gentleman. Towards evening he consented to be taken back to the shanty, where a bed had been prepared for him. Except while the paroxysms were upon him, he was perfectly calm and collected, and gave his last sad directions to a friend who stood by his side. About eight o'clock on the morning of the 28th the death-agony came upon him, and his excruciating tortures were at an end.

Thus passed away Charles Gordon Lennox, Fourth Duke of Richmond, Earl of March and Baron Settrington in the peerage of England; Duke of Lennox, Earl of Darnley and Baron Methuen in the peerage of Scotland; Duc d'Aubigny in France, Governor-General of Canada, lord of Halnaker, Goodwood and West Hampnett. There was, as has been above hinted, a bar sinister in his escutcheon, for he was descended from King Charles the Second and the fair and frail Frenchwoman Louise Renée de Querouaille, who was commonly known among Englishmen of her day as Madam Carwell. This lady, who was probably the least bad of the unlicensed prostitutes of Charles's seraglio at Whitehall, was for her many virtues created Duchess of Portsmouth. Her descendants, like those of Nell Gwynn and the rest of that frail sisterhood, are reckoned among the great ones of the earth. The Duke whose melancholy fate has just been chronicled was the father of Lady Sarah, spouse of Sir Peregrine Maitland, Lieutenant-Governor of Upper Canada.

* * * * * * *

Was there any connection between these two tragical events: the trial of Robert Gourlay and the death of the Duke of Richmond? Mr. Gourlay

evidently leaned to the belief that there was.* The Duke and his son-in-law had passed through Niagara during the hot weather of July, while the victim of Family Compact villainy was gradually having his health and reason tortured out of him in the jail at that place. He was of opinion that the two distinguished visitors should have exercised their prerogative by setting him at liberty. This, of course, was an altogether unreasonable belief. His Grace was not at all likely to interfere in the matter, and as for Sir Peregrine, he was completely in the hands of Mr. Gourlay's enemies. The belief, however, is worth recording, as exhibiting the extent to which Mr. Gourlay's persecution continued to prey upon his mind, even after the lapse of years, and when he was in as good health as he ever regained.

It was deemed advisable that Mr. Gourlay's case should be a perpetual warning to any and every person who might thereafter dare to tread in his venturesome footsteps. Accordingly, as has been seen, he had to drink the cup of mortification to the very dregs. And, by way of deterring public writers from aiding and abetting any such pestilent innovators for the future, it was determined that a notable example should be made of the editor of the Niagara *Spectator*, who had dared to side with the oppressed against the oppressor, and had published some of Mr. Gourlay's attacks upon the abuses of the time. His name was Bartemus Ferguson, and he had on several occasions manifested his sympathy with projects of reform. The discipline inflicted upon him

* Mr. Gourlay was in error as to the date of the Duke's death. He represents him as "writhing in agony at the self same hour," and as dying on the same day when he, Mr. Gourlay, crossed over into the United States.—*Statistical Account*, vol. 2, p. 401. He was astray by exactly a week. By reference to the precept of the court, I find that Mr. Gourlay's trial took place on the day specified in the text—Friday, the 20th of August. He left the Province on the following day—Saturday, the 21st. The Duke's death took place on Saturday, the 28th.

It may perhaps be as well for me to refer here to a story which seems to have obtained some currency, to the effect that the Duke of Richmond's death was due, not to hydrophobia, but to delirium tremens. There is not the shadow of truth in the story. The evidence as to the Duke's having been bitten at Sorel by a tame fox; as to his showing the healed wound on his thumb several weeks afterwards; as to his dread of water during the day before his death, and as to all the circumstances attending that tragical event, is as clear as evidence can very well be. Moreover, his habits were by no means such as to lead to *mania a potu*. He was a *bon vivant*, but, so far as I have been able to ascertain, he did not drink to excess, and was always master of such brains as he possessed. His end was one which his family might honestly mourn, and there was little in his life, nothing in his death, of which they had any cause to feel ashamed.

was swift and severe. He was seized while in bed, in the middle of the night, a hundred and fifty miles from home, conveyed to jail at Niagara, and thence to York, where he was detained in prison for some days out of the reach of friends to bail him. He was tried for sedition at the Niagara assizes a day or two before Mr. Gourlay. In order that public journalists of the present day may note in what comparatively pleasant places their lines have fallen, I transcribe the sentence of the court, which was as follows:—"Therefore it is considered by the said court here that the said Bartemus Ferguson do pay a fine to our said lord the King of fifty pounds of lawful money of Upper Canada: That he, the said Bartemus Ferguson, be imprisoned in the common jail of the District of Niagara for the space of eighteen calendar months, to be computed from the eighth day of November, in the sixtieth year of the reign of our said lord the King: that in the course of the first month of the said eighteen months he do stand in the public pillory one hour, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon: and that at the expiration of the said imprisonment he do give security for his good behaviour for the term of seven years: he the said Bartemus Ferguson in the sum of five hundred pounds, and two sureties in the sum of two hundred and fifty pounds each; and further, that he, the said Bartemus Ferguson, do remain imprisoned in the said jail until the aforesaid fine be paid and security given."

The composition for which the editor was thus held to so stern an account was a letter written by Mr. Gourlay, and signed by his name, published in the *Spectator* during the editor's absence from home, and without his knowledge. It animadverted pretty sharply on the Administration of the day. In the jingling and jangling phraseology of the indictment, it was calculated to "detract, scandalize, and vilify His Grace Charles Duke of Richmond, Lennox and Aubigny, Captain-General and Governor in and over the Provinces of Lower and Upper Canada, Nova Scotia and New Brunswick and their dependencies; and to scandalize and vilify Sir Peregrine Maitland, Knight Commander of the Most Honourable Military Order of the Bath, His Majesty's Lieutenant-Governor of this Province of Upper Canada." Certain public officials, not specifically alluded to by name, were referred to as fools and sycophants. But the letter did not contain a syllable which was not literally true, and was mildness itself when

compared with letters and articles which are constantly published with impunity in newspapers of all shades of political opinion in these present times. It appears that, upon the humble and unequivocal submission of the culprit, some of the most severe penalties imposed by the court were remitted, and that he was erelong allowed to resume his business;* but all enthusiasm for the public good had meanwhile been crushed out of him, and he became one more added to the list of subservient tools which the Executive always managed to have at their control. Such were the glories of a free press in enlightened Upper Canada sixty-six years ago. Such were the "good old times" which our grandfathers are never weary of belauding to the echo. How bright are the hues of retrospection! But for us of the present generation, let us be thankful to the Giver of all Good that such brave old times are long past, and that they can never return. Let them go; but surely it is too much to expect us to pronounce a benison upon their dead and departed dry bones.

Even before the commencement of proceedings against Mr. Gourlay under the Alien Act, his conduct had furnished a pretext to those in authority for striking a heavy blow against freedom of speech and action. The holding of conventions, whereat meddlesome persons of the Gourlay stamp might air their grievances and agitate for investigations into public abuses, was a thing not to be tolerated in Upper Canada. Upon the assembling of the Legislature at York, in October, 1818, the Lieutenant-Governor, in his opening Speech, hinted at a law to prevent the holding of such meetings; and in the course of the ensuing session a Bill to effect that object was introduced into the Assembly by Mr. Jonas Jones, member for Grenville. The Bill was supported by twelve out of the thirteen members present, and was speedily passed into law; but, as will hereafter be seen, it was not destined to a long life.

After a brief delay in the State of New York, Mr. Gourlay repaired to Boston, and thence took ship for Liverpool. On a subsequent page we shall catch one more brief glimpse of him, but with that exception

* "Major-General" D. McLeod, in his "History of the Canadian Insurrection," p. 75, incorrectly states that Ferguson "died in jail from extremely cruel usage."

the present work has no further concern with his chequered existence. He will be referred to from time to time, but only incidentally, and for purposes of illustration. Those who may feel sufficient interest in him to follow his fortunes and misfortunes to the bitter end, will find some account of them in the authority quoted below.*

* *Canadian Portrait Gallery*, Vol. III., pp. 240—256.

CHAPTER II.

A BILL OF PARTICULARS.

THE course of bitter persecution sustained by Mr. Gourlay was really the first remote germ of the Upper Canadian Rebellion. In making this statement I would not be understood as asserting that Gourlay was the first person to set himself up in opposition to authority in the Province, or even that he was the first victim of Executive tyranny. There had been more or less of dissatisfaction at the selfish and one-sided policy of the Administration ever since shortly after the departure of Lieutenant-Governor Simcoe in 1796. Between that date and Mr. Gourlay's arrival in the Province several personages of some local note had paid heavy penalties for daring to have opinions of their own. Mr. Wyatt, the Surveyor-General, had been dismissed from office because he had presumed to point out certain official irregularities, and because he would not betray the trust reposed in him. Joseph Willcocks had been goaded into treason by a long course of persecution. Judge Thorpe had been driven from the country quite as effectually as Mr. Gourlay, for no other reason than that he had persisted in holding up official corruption to the public gaze. But none of these manifestations of "the oppressor's wrath, the proud man's contumely," had taken so deep a hold upon the public mind as did the case of Mr. Gourlay. The injuries inflicted upon him had been so cruel, the perversion of justice so vile, that the public conscience received a shock from which it did not recover during the existing generation. For the first time in Upper Canada's history signs of an organized Opposition began to appear upon the floor of the Assembly. Thenceforward the antagonism between the two parties grew in intensity from year to year. In process of time the Opposition frequently

became the controlling power in the House. At a later stage of its development it divided into two parts. One of these constituted the moderate Reform Party of the Province. The other was made up of the advanced Radical element, whence emanated the Rebellion which forms the especial subject of the present work. All of which will hereafter be narrated with greater amplitude of detail.

It has been intimated that traces of dissatisfaction began to be apparent soon after Governor Simcoe's time. Upon his demission of authority the direction of affairs devolved upon the Honourable Peter Russell, as senior member of the Executive Council; and that gentleman had not been long in authority before murmurs began to be heard about the partial and defective administration of the important department of Crown Lands. There were comparatively few men in the country possessed of sufficient education and business experience to admit of their being entrusted with the charge of public affairs; and where all the offices were necessarily in the hands of a small number of persons, it was a foregone conclusion that irregularities should creep in, and that cliquishness and favouritism should prevail to a greater or less extent. When Lieutenant-Governor Hunter arrived, in 1799, he found that certain objectionable practices had become common, and that the foundation had been laid of serious public evils. Greed and favouritism had obtained a strong foothold, and scarcely any branch of the public service was efficiently managed. The sin of covetousness was not confined to subordinate officials, but included among its votaries some of the highest dignitaries of the Province. It would seem that President Russell himself had an itching palm, and that his individual interests were carefully watched over during his temporary administration of affairs. Everybody has heard how he made grants of public lands from himself to himself,*

* Being somewhat doubtful as to the truth of this oft-repeated story, I have taken the trouble to consult the records in the Crown Lands Office, where I find that Mr. Russell on several occasions made grants of land to himself. Among other such grants I may mention lot number twenty-two, in the third concession of the township of York, which was made on the 16th of July, 1797. See Liber A., folio 382, Provincial Registry Office. He also granted various tracts of land to his sister, Miss Elizabeth Russell, the first of which bears date the 15th of December, 1796. See Liber B., folio 334. So that the President appears to have begun to "do good unto himself" and his family before he had been three months in office as Administrator of the Government. Further investigation would doubtless prove that he kept up the practice until the arrival of Governor Hunter.

thereby violating one of the most cherished maxims of English jurisprudence. Lieutenant-Governor Hunter, in a letter written to a friend in England soon after his arrival at York, refers to P. R.—by whom Mr. Russell is clearly indicated—as "an avaricious one." In a subsequent part of the same epistle he adds: "So far as depended upon him [Mr. Russell] he would grant land to the de'il and all his family as good Loyalists, if they would only pay the fees." During Governor Hunter's own term of office, though there is no evidence of corruption or double-dealing on his own part, abuses continued to exist, and dishonesty too often stared honesty out of countenance. During the *régime* of his successor, Commodore Grant, these abuses grew steadily, both in number and in bulk; and during Francis Gore's long though interrupted administration, they reached a height which called aloud for redress.

And here it is desirable to enquire into the specific nature of the manifold evils which enriched a few at the expense of the many; which endowed a venal and corrupt clique with a practical monopoly of political and social power; which sowed the deadly seed of factious strife, and stemmed the tide of Upper Canadian prosperity.

Theoretically speaking, the constitution granted to Upper Canada by the Act of 1791 was not unfairly represented by Lieutenant-Governor Simcoe as being "the very image and transcript of that of Great Britain."* We had a Legislative Council, the members whereof were appointed by the Crown for life. This body bore some resemblance to the British House of Lords. Next, we had a Legislative Assembly, the members whereof were periodically elected by the people—or rather by such of the people as possessed a sufficient property qualification to entitle them to exercise the franchise; and this property qualification was placed so low as almost to constitute universal suffrage.† The Assembly corresponded to the British House of Commons; and these

* See his speech at the close of the first session of the First Parliament of Upper Canada, on the 15th of October, 1792.

† The property qualification for a voter was, in counties, the possession of lands or tenements of the yearly value of forty shillings sterling or upwards, over and above all rents and charges; and in towns or townships, the possession of a dwelling house and lot of the yearly value of five pounds sterling or upwards, or the having been a resident for twelve months, and the having paid a year's rent at the rate of ten pounds sterling or upwards. See the twentieth section of the Constitutional Act.

two bodies—Council and Assembly—with the Lieutenant-Governor, constituted the Provincial Parliament. The last-named functionary of course corresponded to the Sovereign of Great Britain. He was appointed by the Crown, to whom he was solely responsible. He was in no constitutional sense responsible to either branch of the Legislature, or to both branches combined, or to any other cis-Atlantic authority whatsoever.

With such substitutes for King, Lords and Commons, Upper Canada might therefore be said to possess a pretty close copy of the British constitution. But when carried into practice the resemblance failed in a matter of the very highest import. The absence of ministerial responsibility was an all-comprehending divergence. When a British ministry fails to command the confidence of the electorate, as represented by the House of Commons, resignation must follow. In other words, the Government of the day derives its power from the people, to whom it is responsible for the manner in which it discharges the trust reposed in it; and the moment it fails to command public confidence it must give way to those who possess such confidence. The test of confidence is the vote in the House of Commons. This has been a recognized principle of English Parliamentary Government for nearly two hundred years; in fact, ever since the settlement of the constitution after the Revolution of 1688. With us in Upper Canada there was none of this ministerial responsibility. We had a ministry, but not a responsible ministry. It was manifestly impossible that each member of the Legislative Council and Assembly should be consulted as to every minute detail of the administration. Such a system would be cumbrous, and altogether impracticable. The actual task of carrying on the Government was therefore, as in England, entrusted to a small body of men who, from the nature of their functions, were known as the Executive Council. The members of this body were appointed by the Crown—that is to say, by the Lieutenant-Governor—at will. It was not necessary that they should have seats in either branch of the Legislature, to neither of which were they in any sense responsible. They were not required to possess any property or other qualification. In a word, the Crown's representative was at liberty to select them without any restriction, and no one

in the Province would have had any constitutional right to call him to account if he had seen fit to enrol his own valet as an Executive Councillor. As matter of fact they were commonly selected from the judiciary and other salaried officials, and from the members of the Legislative Council. Their number was indeterminate, but was seldom less than four or more than six, in addition to the Lieutenant-Governor himself. Their functions consisted of giving advice to the Lieutenant-Governor on all matters of governmental policy, whenever he might deem it expedient to consult them. With respect to mere matters of detail, such as appointments to office, he was not supposed to be under the necessity of advising with them, nor, according to an opinion long and ostentatiously proclaimed, was he in these early days under the smallest obligation to follow their advice after it had been given. This, however, was merely the prescriptive view, and it derived no sanction from the Constitutional Act itself, which incidentally refers to the Executive Council as being appointed "within such Province, for the affairs thereof." On the other hand, the Executive Councillors themselves were not legally or constitutionally responsible to the Upper Canadian people, either individually or collectively, for any line of policy they might inculcate, or for any advice they might give. There were no means whereby they could be called to account by the people, even should they corruptly and openly abuse the trust reposed in them.

It is not difficult to foresee the result of so anomalous a state of things, though in this Province, owing to sparsity of population and other local causes, the result did not immediately become apparent. Simcoe was a strong-minded, as well as a conscientious man. He had a policy of his own for the government of the country, both at large and in detail, and during his *régime* he carried out that policy as to him seemed best. He from time to time went through the form of consulting with his Executive Council, but, so far from receiving any impulse from them, he invariably carried all before him at the Council Board, and was the be-all and end-all of the Administration. He was, in short, a beneficent despot, of high and disinterested views, who accomplished much good for Upper Canada, and would doubtless have accomplished more but for his too early removal. The moment his all-pervading

influence was gone, however, the mischief, as has already been seen, began to work. President Russell granted public lands to Peter Russell, and rapidly laid up a store of wealth. Where the head of the public service was thus disposed to help himself, we may be sure that subordinate officials were not slow to follow his example. Subsequent Lieutenant-Governors were for the most part military men, with little knowledge of the country's needs, and with a disposition to make their voluntary exile as easy and agreeable—and withal as profitable—as might be.* They naturally turned for counsel and assistance to their Executive Councillors, who thus became the dispensers of patronage and the supreme power in the State. The Crown's representative was a mere tool in their hands. Their domination was complete. "A body of holders of office thus constituted," says Lord Durham,† "without reference to the people or their representatives, must in fact, from the very nature of colonial government, acquire the entire direction of the affairs of the Province. A Governor, arriving in a colony in which he almost invariably has had no previous acquaintance with the state of parties or the character of individuals, is compelled to throw himself almost entirely upon those whom he finds placed in the position of his official advisers. His first acts must necessarily be performed, and his first appointments made, at their suggestion. And as these first acts and appointments give a character to his policy, he is generally brought thereby into immediate collision with the other parties in the country, and thrown into more complete dependence upon the official party and its friends."

It has been the fashion with most writers on our early history to represent the Executive Council as an arbitrary creation of the early Lieutenant-Governors: as an arrangement sanctioned by the Imperial authorities, but not authorized by the Provincial constitution. Such writers cannot have read the debates which took place in the House of Commons while the Constitutional Act of 1791 was under discussion there. Nay, they cannot have read the Act itself with much care.

* The latter part of this clause has no application to Brock, who was made of manlier stuff. Brock, however, was not Lieutenant-Governor, but merely Provisional Administrator of the Province.

† *Report on the Affairs of British North America*, English folio edition, p. 29.

Nothing is more certain than that the framers of that statute contemplated the creation of an Executive Council. By reference to the seventh, thirty-fourth and thirty-eighth clauses it will be seen that the Executive Council is definitely mentioned by name, and that the appointment of such a body is assumed, and treated as a matter of course. But that the Council should occupy the same relative position as in Great Britain, and that it should be amenable to public opinion as expressed by the vote of the House of Assembly, does not appear to have been clearly understood. Indeed, with the exception of a few master minds, such as Pitt, Fox, and Burke, but little interest seems to have been taken by British legislators in this important colonial experiment. Parliamentary Government, though it had been long established in England, had not then been reduced to a science. Even such clear-sighted statesmen as Pitt and Fox were blind to facts which at the present day force themselves upon the attention of every student of constitutional history. What wonder, then, that there should have been defects in the measure of 1791? What wonder that even eminent statesmen should have attempted to square the circle in politics by introducing such an incongruity as representative institutions without Executive responsibility? Power was given to the popular branch of the Legislature to pass measures for the public good. But, no matter how overwhelming might be the majorities whereby such measures were passed, there was no obligation on the other branches of the Legislature to accept or act upon them. In the words of one of our own writers: "the Legislative Councils, nominated by the Crown, held the Legislative Assemblies by the throat, kept them prostrate, and paralyzed them."* As for the members of the Executive Council, they were to all intents and purposes independent of public opinion, and could override a unanimous vote of the Assembly without incurring any responsibility whatever. By reference to the correspondence between successive colonial Governors and the Home Office, it appears to have been tacitly recognized by the magnates on both sides of the Atlantic that it was unnecessary for a colonial Executive to defer to a Parliamentary majority. The right of appointment to office was considered to be the exclusive prerogative of

* *The Constitutional History of Canada*, by Samuel James Watson, Vol. I., p. 128.

the representative of the Sovereign, and it was regarded as a badge of colonial dependence that the people should have no voice in such matters.

It seems to have been assumed that certain Imperial interests were involved in this great question, and that to give way to the popular demand would be to render the colonies free from Imperial control. What those particular interests were which required to be protected by so jealous and anomalous a doctrine does not appear to be anywhere specified with precision. But nothing is more certain than that confusion and chaos must be the inevitable outcome of any attempt to reduce to practice such opposite principles as are involved in Representative Government and Executive irresponsibility. Such an attempt in England would very soon produce revolution. Such an attempt in France did actually produce revolution in 1830, when Charles the Tenth was deposed for his persistent endeavours to maintain an unpopular ministry in power. No country in the world would long continue to tolerate a Parliamentary system which was free and representative in theory, but tyrannous and despotic in practice. Upper Canada was indeed long-suffering, but a time arrived when it became evident that there was a limit to her powers of endurance.

As the years rolled by, and the country steadily advanced in wealth and population, abuses grew apace.* The Executive became rapacious and tyrannical. Commanding, as they did, the entire administrative and official influence of the Province, they ordered all things according to their own pleasure. They could count upon the support of every member of the Legislative Council. Indeed, through their pliant tool, the Lieutenant-Governor for the time being, they controlled the mem-

*The abuses specified in the present chapter were not confined to Upper Canada. They existed, with certain local variations, throughout all the British North American colonies, and produced similar results in each; viz., ever-recurring conflicts between the Executive and the popular branch of the Legislature, followed by more or less alienation of loyalty to the mother country on the part of the more radical element in the community. In the Maritime Provinces the alienation was not sufficiently widespread to manifest itself in actual rebellion, though the conflict between the oligarchy and the popular tribunes sometimes produced a very disturbed state of feeling. In Lower Canada, where the element of race-hatred was added to all other sources of disturbance, the conflict attained an intensity far beyond what was reached in any of the other colonies, and left traces behind it which are not even yet wholly obliterated.

bership of the latter body, and took care that no man was appointed a Legislative Councillor unless he was either one of themselves or wholly subject to their influence. The Assembly soon found that it was deliberately and systematically deprived of the privileges which of right belonged to it, and that it was little better than a nullity. It might meet and go through the form of passing such measures as it saw fit, but if the measures so passed were not acceptable to the Legislative and Executive Councils they were contumeliously vetoed when they reached the Upper House. This brought the two deliberative branches of the Legislature into direct and perpetual conflict. The Assembly, however, in early years, was always largely made up of such men as Isaac Swayze—subservient creatures of the Administration, who opposed their influence to that of the tribunes of the people, and prevented any collision between the two Houses from assuming a very serious constitutional aspect. It was not till the third decade of the century that the conflict assumed such a character as to threaten the foundations of the constitution itself; and it was not till the fourth decade that any actual attempt was made to subvert those foundations.

The Province was about fifteen years old before the inhabitants of Upper Canada generally began to realize what an intolerable burden they had to bear in this irresponsible Executive. Before that time some of the better educated and more intelligent among them recognized its existence as an evil with which they or their descendants would at some future time be called upon to deal. But such persons were comparatively few in number, and as the burden did not lie with special heaviness upon their own backs, they did not feel called upon to involve themselves in what might prove a ruinous quarrel with persons who would not tamely submit to interference. As for the inhabitants generally, they were too busily occupied in clearing their lands, in hewing out homes for themselves and their families in the vast wilderness, and in reducing the soil to a state fit for cultivation, to give themselves much concern about public affairs. There was no newspaper press to stimulate them to enquiry. The only sheet published in the Province which by any license of language could be called a regular newspaper was *The Upper Canada Gazette*, which was the official mouthpiece of the Administration. *The Canada Constellation*, which was a quaint long folio, published at the old capital, Niagara,

had but a brief existence, and expired during the very early years of the century. The *Upper Canada Guardian*, to be hereafter referred to, did not come into being till 1807. Editorial articles, except of the briefest and crudest sort, were a still later development. The bucolic mind had no intellectual stimulant whatever except such as was to be obtained from contact with other bucolic minds through the medium of conversation. It was no wonder, then, that for the first fifteen years after the creation of Upper Canada, the Provincial Government should have been permitted to do very much as it chose, without being subjected to any formidable criticism on the part of the community.

The Legislative Council, as has been said, was composed of members nominated by the Sovereign's representative. By the sixth section of the Constitutional Act provision had been made for the creation of a hereditary nobility, with the hereditary right of being summoned to the Legislative Council. Happily this authority was not exercised; otherwise, as Gourlay has remarked, "we should have seen, perhaps, the Duke of Ontario leading in a cart of hay, my Lord Erie pitching, and Sir Peter Superior making the rick; or perhaps his Grace might now have been figuring as a pettyfogging lawyer, his Lordship as a pedlar, and Sir Knight, as a poor parson, starving on five thousand acres of Clergy Reserves."* We were spared the spectacle of such absurdities, and life members of the Legislative Council were the nearest approach to a nobility vouchsafed to us. Some of the first appointees were men of intelligence and probity, but few of those subsequently created could with any show of truthfulness be so characterized. They were for the most part dependants of the Government, with no fitness, educational or otherwise, for the discharge of grave legislative functions, and with no motive but to do the bidding of those who had clothed them with the dignity of office. All things considered, this condition of things was to be looked for; but the inevitable result followed. The few upright members either died off in the course of time, and were succeeded by sycophantic placemen, or, finding themselves outnumbered, ceased to attend the sittings of the branch of the Leg-

* *Statistical Account*, Vol. II., p. 296.

islature to which they belonged. In one way and another, those who really wished to preserve the public interests were weeded out, and nothing was left but a rump devoted to the Executive will. Instead of answering the purpose for which it was originally intended, the Legislative Council became a mere instrument in the hands of the oligarchy for stemming back the tide of public opinion. Instead of forming a seasonable and wholesome check upon extravagance and inconsiderate legislation in the Lower House, it contributed to the impoverishment of the Provincial revenue by assisting to keep the control of public affairs in the hands of selfish and unprincipled men. Instead of preserving the "happy balance of our glorious Constitution" — a phrase constantly placed in the mouths of Lieutenant-Governors, and embodied in their addresses to our Canadian simulacrum of the House of Lords—it tended to keep the balance all on one side, and that side was the one most prejudicial to the public good. It became a mere stop-gap interposed by the Government between itself and the Assembly. The Assembly passed measure after measure with careful deliberation, only to find that their time had been thrown away, for upon reaching the Upper House these measures were ignominously thrust aside. One who had himself been a member of the Assembly, and who had had personal experience of the evils whereof he wrote, has left the following description of the manner in which Bills from the Lower Chamber were treated in the Upper: "Sitting for a short time each day, the Bills of the Assembly are despatched under the table with unexampled celerity. Deputations, conveying up popular measures, no sooner have their backs turned than the process of strangulation commences. Bills that have undergone discussion for days in the other House, and that have been amended and perfected with the greatest care, no sooner arrive in their august presence than their fate is sealed."* He adds: "Of those who attend to their duties, two-thirds are dependent on the Government for either salaries or pensions. It is not harsh to say that they become the willing tools of the hand that feeds them, instead of looking to the interests of those from whom they indirectly derive their support. Such gratitude may be

* *Canadiana*, by W. B. Wells, p. 103.

very amiable, but it is no qualification for an independent legislator."* These lines were written as late as the year 1837, and their author informs us that within the preceding eight years the Council had rejected no fewer than three hundred and twenty-five Bills passed by the Assembly, being an average of more than forty for each session†—a statement which is fully confirmed by reference to the official journals of the respective Houses.

Such a method of procedure, leading to inevitable conflicts between the two Houses, caused the public business to be impeded and the public interests to be very inefficiently conserved. The whole administrative system of the Province was disorganized. The contest was very unequal, for the Government could frequently command a majority of votes in the Assembly. The minority in that House smarted under a sense of tyranny and injustice, and felt that they were of no weight in the body politic. That sense of dignity which is imparted by a consciousness of contributing to the formation of public policy and opinion was wanting. Not only were the benefits arising from a proper organization of labour altogether lost, but the antagonism between the two factors in political life was so great that they to a large extent neutralized each other. The Upper House had no weight with the people; the Lower House had no weight with the Crown.

One of the greatest drawbacks to the country's prosperity was the method of granting public lands. It had been the policy of Governor Simcoe to encourage immigration from the United States, as well as from Great Britain and continental Europe. He had offered great inducements, in the shape of free grants of wild lands, to persons settling in Upper Canada, and his offer had produced the expected results in the shape of a full tide of immigrants. He had, however, exercised a rigid personal supervision over these grants, and had done his utmost to prevent the abuse of his bountiful regulations. His successors were less scrupulous, and being, as has been seen, under the control of greedy and selfish persons, they permitted the public lands to be used as means of enriching and corrupting the favourites of the Administration. The

* Ib. † Ib., p. 104.

land-granting department was honeycombed by jobbery and corruption. Grants of five thousand acres were made to each member of the Executive Council, and of twelve hundred acres to each of their children. Similar grants were made to certain favoured members of the Legislative Council and their children.* Numerous other personages who could command sufficient influence at Court obtained grants of twelve hundred acres each. The extent of an ordinary grant was two hundred acres. From the creation of the Province down to 1804 these donations were unattended by any cost whatever to the grantees beyond trifling fees to the officials for their trouble in passing the entries through the office books. The privilege of obtaining landed estates for nothing was abused to such an extent, however, that the Home Office interfered, and in the year last named a scale of fees proportionate to the extent of the grant was introduced; but U. E. Loyalists, officers, soldiers, Executive Councillors and their children were exempt even from this trifling burden. In 1818 the performance of certain settlement duties was imposed upon all persons receiving grants, without any exemptions, and in after years several other scales of fees were introduced from time to time. The public lands were committed to the care of an official called the Surveyor-General, and it was not until 1827 that a Commissioner of Crown Lands was appointed. During the first thirty-five years of the Province's history grants of land were entirely subject to the discretion of the Governor-in-Council, not merely as to the quantity and situation of the land itself, but also as to whether the applicant should receive any grant at all.† Under such a system it was inevitable that the grossest par-

* These grants of five thousand acres to members of the Executive Council were in direct violation of the instructions framed by the Home Government for the regulation of land-granting in Upper Canada. They continued to be made down to 1807, when they were stopped by a peremptory order to that effect from the Colonial Secretary. There is one instance on record of a reserve being applied for and made on behalf of the child of a member of the Legislative Council, though the child was not three days old. See the evidence of John Radenhurst, Chief Clerk in the office of the Surveyor-General, in Appendix B. to Lord Durham's *Report on the Affairs of British North America.*

† Most of these facts with reference to the granting of public lands may be obtained from the archives of the Crown Lands Office in Toronto, and from the newspapers and official reports of the period. They may also be found, together with a vast accumulation of other important facts bearing on the same subject, in Charles Buller's Report on Public Lands and Emigration, forming Appendix B. to Lord Durham's *Report on the Affairs of British North America.*

tiality should prevail, and it was but seldom that any one succeeded in obtaining a grant until those in authority had satisfied themselves that he was to be relied upon to uphold any policy which they might see fit to dictate. Official dignitaries granted lands to their servants and other dependants, and, as soon as certain requisite forms had been complied with, these lands were transferred to themselves or their children. In other cases persons were actually hired by the month to draw land and perform the settlement duties, after which the land was conveyed to their employers. Having the run of the official books, these cormorants contrived in one way and another to acquire for themselves and their creatures all the best lands in the Province, either wholly for nothing or at a price which was merely nominal. "The keys of office," says a writer already quoted from, "were held by themselves or friends, and no admittance to their secrets was allowed except to the initiated, whose favourable out-of-door statements could be relied on. Never since the Norman invasion of England was there such a wholesale partition of plunder." * Many persons owned or controlled, directly or indirectly, entire townships.† Others owned thousands of acres which they had never seen. As the taxes imposed on unsettled lands were trifling, these immense tracts were no appreciable expense to their owners, who could hold them from year to year, until the progress of settlement rendered them of immense value. Such progress was inevitable, for

* *Canadiana*, p. 130.

† In 1796 or therabouts the Executive offered to grant entire townships to persons who would undertake to settle them with a certain number of colonists within a specified time. The number of colonists required was made proportionate to the extent of territory to be settled. This offer was taken advantage of by ten different individuals. The grants were not actually made, but the respective townships were allocated in the official books to the various persons concerned. Upon the faith of the pledge of the Executive, several of the ten assignees proceeded to carry out the conditions imposed. Among them was Mr. William Berczy, who, having obtained an assignment of the township of Markham, went to great expense in bringing over a number of German families, whom he settled according to the conditions of the contemplated grant. After he had spent a sum of money variously stated at from twenty to thirty thousand pounds sterling, the Executive coolly announced that they had determined to abandon the township system, and that they did not even intend to carry out the grants to those who had complied with the conditions. The compensation offered for this unparalleled breach of faith was a grant of twelve hundred acres to each assignee. Nine of the individuals concerned assented to these terms, but Mr. Berczy refused to accept any such inadequate recompense, and he remained for the rest of his life a ruined man. He shook the dust of Upper Canada from his feet, and took up his abode in Montreal, whence he subsequently repaired to New York, where he died in the year 1813.

though these huge reservations tended to keep back the country, settlers obtained grants of adjoining lands, and their labours could not fail to increase the value of all contiguous territory. The Home District, including the most valuable portion of Upper Canada, was especially afflicted by these wholesale reservations, but every part of the Province was more or less crippled by them.

The ruling faction and their favourites, not satisfied with the enormous direct and indirect grants of lands which they managed in one way and another to obtain, availed themselves of every opportunity to buy up land which had been granted to persons who had expended their little all on their properties, and had thereby become impoverished. Among these latter were many half-pay officers and others of good birth but limited means, who had sought homes for themselves in the Canadian wilderness. Not a few had been compelled to sell their commissions in order to obtain the wherewithal to settle themselves and their families on the lands granted to them. Finding themselves cut off from society, and ill-suited to face the privations of pioneer life, they became discouraged, and sold their lands for whatever meagre price they could get. The land-jobbers were ever on the alert to buy up these tracts at a few shillings an acre, not with any intention of settling upon or improving them, but solely for the purpose of holding them for an increased value. The grants to the children of U. E. Loyalists were the constant subjects of bargain and sale, and wrought great evil to the Province without producing any corresponding benefit to the recipients. Very few of the lots so granted were ever occupied by the grantees, most of whom were young persons of both sexes who resided with their parents, and had no inclination to set up for themselves in the wilderness. These grants were frequently sold at ridiculously low prices. From two to five pounds was an ordinary price for a lot of two hundred acres. Mr. John Radenhurst, who was Chief Clerk in the office of the Surveyor-General for many years, is entitled to speak on this subject with authority. In his evidence taken before Lord Durham's Commissioner, in 1838, he states that the general price paid by speculators for the two-hundred-acre lots granted to sons and daughters of U. E. Loyalists was "from a gallon of rum up to perhaps six pounds." In answer to another question, he

states that while millions of acres were granted in this way, the settlement of the Province was not advanced, nor the advantage of the grantee secured in the manner that may be supposed to have been contemplated by Government. He mentions the Honourable Robert Hamilton, a member of the Legislative Council, and the two Chief Justices, Elmsley and Powell, as among the largest purchasers of these lands. Mr. Hamilton's acquisitions amounted to about a hundred thousand acres.* Elmsley and Powell, in addition to the five thousand acres which each of them had obtained for nothing as members of the Executive Council, managed to acquire quantities of land which, had they been brought together in one spot, would have made a township of average size. Thus was monopoly perpetuated and increased from year to year, and thus were large tracts of the Provincial territory maintained in a state of primitive wilderness.

Intimations of the gigantic abuses existing in the land-granting system of Upper Canada were more than once sent across the Atlantic to the Colonial Secretary, who instructed the Lieutenant-Governor to impose certain regulations with a view to preventing the continuous repetition of injustice. The Colonial Office, however, was more than three thousand miles away, and means were easily found for evading any restrictions imposed at such a distance. Some idea of the extent which the evil had attained in the year 1818 may be derived from the two passages in that

* See Appendix B. to Lord Durham's *Report*, folio edition, p. 99. Mr. Charles Rankin, Deputy-Surveyor in the Western District, in his evidence before the Commission (*ib.* pp. 120, 121), says:—"The system of making large grants to individuals who had no intention of settling them has tended to retard the prosperity of the colony by separating the actual settlers, and rendering it so much more difficult, and in some cases impossible, for them to make the necessary roads. It has also made the markets more distant and more precarious. To such an extent have these difficulties been experienced as to occasion the abandonment of settlements which had been formed. I may mention, as an instance of this, the township of Rama, where after a trial of three years, the settlers were compelled to abandon their improvements. It should be noticed that the settlers in this instance were not of a class fitted to encounter the privations of the wilderness, being half-pay officers. In the township of St. Vincent almost all the most valuable settlers have left their farms from the same cause, the townships of Nottawasaga and Collingwood, the whole of the land in which had been granted, and which are almost entirely unsettled (Collingwood, I believe, has only one settler), intervening between them and the settled township, and rendering communication impossible. There have been numerous instances in which, though the settlement has not been altogether abandoned, the most valuable settlers, after unavailing struggles of several years with the difficulties which I have described, have left their farms." This witness further states his belief that nine-tenths of the lands in the Western District were still—in 1838—in a state of wilderness.

very petition to the Prince Regent for which Mr. Gourlay was indicted at Kingston and Brockville, as related in the preceding chapter. "The lands of the Crown in Upper Canada," proceeds the petition, "are of immense extent, not only stretching far and wide into the wilderness, but scattered over the Province, and intermixed with private property already cultivated. The disposal of this land is left to ministers at home, who are palpably ignorant of existing circumstances, and to a council of men resident in the Province, who, it is believed, have long converted the trust reposed in them to purposes of selfishness. The scandalous abuses in this department came some years ago to such a pitch of monstrous magnitude that the Home ministers wisely imposed restrictions upon the Land Council of Upper Canada. These, however, have by no means removed the evil; and a system of patronage and favouritism, in the disposal of the Crown Lands, still exists; altogether destructive of moral rectitude and virtuous feeling in the management of public affairs. Corruption, indeed, has reached such a height in this Province that it is thought no other part of the British Empire witnesses the like, and it is vain to look for improvement until a radical change is effected. It matters not what characters fill situations of public trust at present—all sink beneath the dignity of men—become vitiated and weak, as soon as they are placed within the vortex of destruction. Confusion on confusion has grown out of this unhappy system; and the very lands of the Crown, the giving away of which has created such mischief and iniquity, have ultimately come to little value from abuse. The poor subjects of His Majesty, driven from home by distress, to whom portions of land are granted, can now find in the grant no benefit; and Loyalists of the United Empire—the descendants of those who sacrificed their all in America in behalf of British rule—men whose names were ordered on record for their virtuous adherence to your Royal Father—the descendants of these men find now no favour in their destined rewards; nay, these rewards, when granted, have in many cases been rendered worse than nothing, for the legal rights in the enjoyment of them have been held at nought; their land has been rendered unsaleable, and, in some cases, only a source of distraction and care. Under this system of internal management, and weakened from other evil influences, Upper Canada now pines in comparative decay;

discontent and poverty are experienced in a land supremely blessed with the gifts of nature; dread of arbitrary power wars, here, against the free exercise of reason and manly sentiment; laws have been set aside; legislators have come into derision; and contempt from the mother-country seems fast gathering strength to disunite the people of Canada from their friends at home." Notwithstanding these long, involved, awkwardly-constructed sentences, there is no more accurate picture to be found anywhere of the effect of the pernicious administration of affairs in the Public Lands Office at York in 1818. Twenty years later Lord Durham found it not much improved.*

Another hydra-headed monster which ate into the very vitals of the commonwealth was the provision for the clergy, known as the Clergy Reserves. This was perhaps the greatest of all the curses imposed upon Upper Canada by the Constitutional Act, for its ill effects were both direct and incidental. It not only tended to stop the march of progress, but it created a degree of sectarian animosity and hatred little calculated to inspire respect for Christianity in the breasts of the secular portion of the community, and it disturbed the public tranquillity for nearly two generations.

By the thirty-sixth section of the Act of 1791, power was given to reserve out of all future grants of land in Upper and Lower Canada, as well as in respect of all past grants, an allotment for the support of "a Protestant Clergy." It was provided that this allotment should be "equal in value to the seventh part of the lands so granted." By the thirty-seventh section, the rents, profits and emoluments arising from the lands so appropriated were to be applicable solely to the maintenance and support of a Protestant Clergy. By subsequent sections provision was made for the erection and endowment by the Lieutenant-Governor, under instructions from the Crown, of parsonages or rectories, one or more in every township or parish, according to the establishment of the Church of England, and for the presentation of incumbents, subject to the bishop's right of institution. By section forty-two it was enacted that no Provincial statute varying or repealing these provisions should receive the royal assent until thirty days after it had been laid before both Houses

* See his *Report, passim;* also see the portion of Appendix B. relating to Upper Canada.

of Parliament in Great Britain. These famous enactments were destined to produce more discord and heartburning than all the other clauses of the Constitutional Act combined. They were destined to make the Church of England more cordially detested in this Province by persons without the pale of her communion than she has ever been in any other part of the world. They were destined to set one Legislative faction against another in such fierce array that the public business frequently had to be suspended. They were destined to divide the Provincial population into two hostile camps, each filled with envy, malice and all uncharitableness towards the other. They were destined to be the key-note of general elections, and to shape the policy of successive Administrations. They were destined to be the chief factor in bringing about a Rebellion which for a time seriously disturbed the industries of the Province; which filled the Provincial jails with suffering prisoners; which consigned a number of persons to a premature and ignominious death; which brought sorrow and ruin to many a once happy fireside; which bequeathed a legacy of hatred to the children of those who took part in it; and which seriously disturbed the international amity between Great Britain and the United States.

It may be doubted whether all the ill effects of these appropriations were foreseen by their promoters in the early years of our history. It was at all events some time before those effects began to be apparent to the people generally. In making the appropriations, care was taken that the reserved lands should be intermixed with grants to actual settlers, whereby they were spread over a large area; the manifest intention being to increase their value by their proximity to cultivated farms, and at the same time to create a tenantry in the settled townships, with a view to the creation of parishes and the endowment of rectories. In several portions of the Province, however, it was impossible to follow this plan. Much of the Niagara peninsula had been granted to Butler's Rangers before the passing of the Constitutional Act. In like manner, certain townships along the north bank of the St. Lawrence, as well as several portions of the Western District, had been granted to other United Empire Loyalists. In none of these cases had any reservations been made, and the lands had already become vested in the grantees.

The appropriators accordingly set apart large tracts of aggregated reservations in contiguous townships which were yet unsettled. The prejudicial results soon began to appear. Huge tracts of reserves interposed themselves between one settler and another, enhancing the difficulties of communication and transportation, and hindering or altogether preventing that coöperation of labour which is essential to the prosperity of pioneer settlements. The inhabitants, instead of being drawn together, were isolated from one another, and combination for municipal or other public purposes was rendered all but impracticable. They were kept remote from a market for the sale of their produce, cut off from the privileges of public worship and public education for their children; deprived, in a word, of the blessings of civilization. Settlement was seriously obstructed, and the industrious immigrant was to a great extent paralyzed by his surroundings.

The evils arising out of these Clergy Reserves were intensified by the unfair and illegal manner in which the appropriations were made. It has been seen that by the Act of 1791 the land reserved for the clergy was to be equal to one-seventh of all grants made by the Crown. One-seventh of all grants would obviously be one-eighth of the whole. Yet, instead of acting on this self-evident proposition, it was the practice of those to whom the duty of reservation was entrusted to set apart for the clergy one-seventh of *all* the land, which was equal to a sixth of the land granted. The surplus thus unjustly appropriated on behalf of the clergy had in 1838 footed up to a total of three hundred thousand acres. The excess was confined to about two-thirds of the surveyed townships, from which circumstance, as well as from the obvious construction of the statute, it is to be inferred that the excessive reservations were made deliberately, and not from mere oversight or inadvertence.*

As the Province increased in population, and as land advanced in value, the grievance became more and more manifest. The growl of discontent began to be heard, and the people began to combine against the intolerable evil. This, at first, was chiefly due to the purely secular

* See the Special Report of Mr. R. Davies Hanson, Assistant Commissioner of Crown Lands and Emigration, forming the commencement of Appendix A. to Lord Durham's *Report on the Affairs of British North America.*

reasons above indicated. By degrees, however, the sectarian element was developed, and the growl of discontent became a roar of opposition. A dominant church was not acceptable to the Dissenters* who composed the bulk of the population; yet it was contended by those in authority—all of whom were Episcopalians—that the Clergy Reserves were the exclusive domain of the Church of England. It must be conceded that there was some ground for this contention, and that the question was not quite free from doubt. The Act authorizing the setting apart of the Reserves had appropriated them for the maintenance and support of "a Protestant Clergy." The word "clergy" was not commonly applied in those days to dissenting ministers of religion. It had never been used in any English statute to designate any ministers except those of the Church of Rome and the Church of England. The Church of Rome being excluded by the term "Protestant," it was contended that the provision had been for the exclusive benefit of the Church of England, more especially as the creation and endowment of parsonages and rectories—which are institutions peculiar to the Church of England—had been expressly provided for by the same Act. Such was the plea put forward on behalf of the Church of England. Dissenters took a different view. They argued that the term "Protestant Clergy" had been used in the Act in mere contradistinction to the clergy of the Church of Rome. They further urged that the limited construction sought to be put upon the term by the Anglicans was plainly negatived by the thirty-ninth section of the Act, wherein the words "incumbent or minister of the Church of England" were expressly employed. Such terms, it was said, would not have been used by the framers of the Act if they had regarded them as synonymous with "Protestant Clergy," as used in other clauses. "The manifest intention of the Act," said the Dissenters, "was to provide for a *Protestant*—as distinguished from a *Roman Catholic*—clergy. The provision for the establishment of parsonages and rectories is a mere matter of detail, which cannot be allowed to override the larger intention so plainly evidenced by other sections."

* I use this word for want of a better, though it is not strictly accurate as applied to Upper Canada, where there were no clearly prescribed standards of religious faith from which non-supporters of Episcopacy could be said to dissent. The word "Nonconformist" is objectionable for a similar reason.

The Presbyterian body took higher ground than their non-Anglican brethren. The Church of Scotland had been expressly recognized as a Protestant Church by the Act of Union of England and Scotland in 1707. It was therefore contended that the ministers of that church were entitled to be considered as "Protestant Clergy;" and this contention was sustained by the English law officers of the Crown in 1819. The opinion expressed by those learned officials was acted upon, and the Presbyterians of Upper Canada put forward claims to a share of the Reserves. Their claims were allowed; whereupon other Protestant denominations followed their example, and demanded, as "Protestant Clergy," to participate in the provision made for them. The private and public quarrels which ensued between leaders of the different sects kept the country in a state of chronic disturbance; while the greed displayed by professed ministers of religion furnished a striking practical commentary upon the doctrines taught by the Founder of all Christian faiths. Opinions were obtained from eminent lawyers as to the respective rights of the various sects, and as to the true meaning of the Constitutional Act. The most opposite conclusions were arrived at by different lawyers, and it became manifest that no apportionment satisfactory to all the claimants could be made by any tribunal. The Church of England meanwhile contrived to secure the great bulk of the spoils. According to a return to the House of Assembly of lands set apart as glebes in Upper Canada during the forty-six years from 1787 to 1833, it appears that 22,345 acres were so set apart for the Clergy of the Church of England, 1160 acres for Ministers of the Kirk of Scotland, 400 for Roman Catholics, and "none for any other denomination of Christians."*

But there was a broader and stronger argument than any of these purely technical contentions: an argument founded on experience and practical utility. No matter what had been the intent of the original framers of the Constitutional Act, the fact had become patent to all Dissenters, and even to many liberal-minded lay members of the Anglican Church, that the Clergy Reserves were a curse to the Province—a mill-stone about her neck, which dragged her down in spite of all exertions to raise her to the surface. Not long after this fact had become generally

* See *Seventh Grievance Committee's Report*, p. 164.

recognized, an agitation arose in favour of the total abolition of State aid to religious bodies. The plan advocated by Reformers was the sale of the Reserves, and the application of the proceeds to public education and municipal improvements. The agitation was kept up until long after the period covered by this work, and the object sought to be attained by it was not fully accomplished until the year 1854. Meanwhile, however, it was the most important question before the country, and it occupied the attention of the Legislature during a large part of almost every session. Here was where the conflict between the two Houses was felt with most pernicious effect. The advocates of abolition and secularization clearly had the country with them, and the Assembly passed Bill after Bill to effect those objects. Their efforts were utterly nullified by the Upper House, which would not listen to any such proposals, and which threw out as many Bills relating to this important subject as the Assembly thought proper to send up for its consideration. Such were the merits of the long and fiercely-contested question of the Clergy Reserves.

Another serious obstacle to Upper Canadian prosperity was the continual interference of the Colonial Office in our domestic concerns. Bills passed by the Provincial Legislature for the regulation of our own internal affairs were disallowed with vexatious frequency, and sometimes, apparently, from mere caprice. Sometimes the irresponsible Executive, unwilling that their obedient servants in the Upper House should incur popular odium by opposing the will of the Assembly, permitted Bills to pass both Houses, and then, through their tool the Lieutenant-Governor, had these identical measures disallowed. Advice, the compliance with which could not fail to be prejudicial to the interests of the colony, was also sent across the Atlantic through the Lieutenant-Governor, to whom it came back by return post in the shape of Imperial instructions to be acted upon. The Colonial Minister, whoever he might for the time happen to be, knew little and cared little about the British North American colonies, and did not generally concern himself with despatches to colonial Governors any further than to sign his name to them. He was thus the unconscious means of furthering Executive tyranny, and to some extent of alienating the loyalty of the colonists.

Among other drawbacks, sufficiently serious in themselves and in their ulterior consequences, but of minor importance when compared with the all-permeating grievances already referred to, may be mentioned the quartering of military men upon the colony in the capacity of Lieutenant-Governors; the unequal representation of the people in the Assembly; the exorbitant salaries of certain public officials; the union of judicial and legislative functions in the same persons; the appointment of judges, sheriffs, magistrates, and other officials during the pleasure of the Executive, and not during good behaviour.

The evils attendant upon placing the local administration of the colonies in the hands of military officers, who were inexperienced in constitutional government, and unfitted by training for such duties as were demanded of them, have already been glanced at.* Such persons naturally enough found themselves altogether out of their proper element upon their arrival in the colony, and looked to the Executive Councillors for advice and instruction. That they should follow the instruction received, and that they should surrender themselves to the judgment of those enemies of the public weal, followed almost as a matter of course. In this way the strength of the oligarchy was consolidated and enlarged, and its members rendered more and more independent of public opinion. All that can be urged on behalf of the Home Ministry, by way of excuse for committing the direction of our affairs to such persons, is that the position of Lieutenant-Governor of Upper Canada was not a sufficient inducement to make it sought after by really capable men. The office, in at least one instance to be hereafter recorded, went a-begging.

Unequal representation was a fruitful source of discontent, though Upper Canada was no worse off in that respect than the mother-country prior to the passing of the Reform Bill of 1832. For years before the Rebellion, the little district towns of Niagara, Brockville and Cornwall each enjoyed the privilege of sending a representative to the Assembly. All three of them were notoriously rotten boroughs—as rotten as Gatton, Grampound or Old Sarum—and always returned Tory members prepared to do the bidding of the Executive. By such means was the Assembly corrupted, and the elective franchise turned into an instrument of oppression. Some of the salaries of public officials were altogether

* *Ante*, p. 51.

out of proportion to the state of the revenue, and to the nature and extent of the duties performed. Certain highly-paid offices were the merest sinecures, and had been created for no other purpose than to provide for serviceable tools of the Administration. The practice of permitting judges to sit and vote in the Legislature needs no comment. Whatever justification there might have been for such a union of functions in the first infancy of the Province, when educated men were few in the land, there was certainly none in the days when Chief Justice Robinson was Speaker of the Legislative Council. The effect of making the tenure of office of judges and other dignitaries dependent on the will of the Executive was such as has attended upon such a system in all countries where it has been in vogue. The officials were selected almost entirely from one political party, and had always an eye upon the nod of their taskmasters, who had the power to make or unmake them. Whenever it was desirable, in the supposed interests of the Executive, that the authority of the courts should be strained to the perversion of judgment, the dispensing of even-handed justice was altogether a secondary consideration. Mr. Gourlay's case, to say nothing of that of Bartemus Ferguson, affords a sufficient illustration of the extent to which the traditions of the Star Chamber were revived in Upper Canadian practice, when it was thought desirable to crush a champion of popular liberty and equal rights.

Such were a few of the burdens which the people of Upper Canada were compelled to bear in the by-gone epoch when tyranny reigned supreme thoughout the Province: when

> "the law's delay,
> The insolence of office, and the spurns
> That patient merit of the unworthy takes,"

were the all too frequent portion of such of the inhabitants as dared to call in question the righteousness of existing ordinances. There was a further intolerable grievance which was closely bound up with, and which, so to speak, grew out of or sustained all the rest: which comprehended within itself all the evils affecting the body politic, and which left traces of its existence that have survived down to the present time. This was the Family Compact—a phrase which is in everybody's mouth, but the significance whereof, I venture to think, is in general but imperfectly understood. The subject deserves a chapter to itself.

CHAPTER III.

THE FAMILY COMPACT.

WHAT was the nature and origin of this powerful organization—this informally-constituted league, the name whereof has been familiar to the ears of Upper Canadians during the whole, or nearly the whole, of the present century; which is referred to in nearly all books dealing with the political and social life of this Province before the Union of 1841; which for forty years regulated the public policy of the colony, and ruled with an iron hand over the liberties of the inhabitants?

Immediately after the ratification of the Treaty of Paris, in 1763, whereby Canada was ceded by France to Great Britain, it became necessary for the British Government to appoint a considerable number of officials to fill the public offices in the country so ceded. It did not suit the policy of the conquerors to leave much power in the hands of the conquered. The introduction of the English language and laws was moreover a practical disqualification for most of the native inhabitants of the colony, and the new officials were nearly all sent over from England. Some of the principal personages among them were men of probity and brains. Others, though possessed of a full share of brains, had but a younger brother's portion of the other commodity. The underlings, generally speaking, had but a slender allowance of either. They were for the most part appointed on the recommendation of various supporters of the Government of the day, who were thus able to provide for a number of their needy relatives and dependants—a matter of vastly greater importance in their eyes than the proper administration of the affairs of a distant and newly-acquired colony. The

Conquest thus proved a boon to many servile hangers-on of public men in Great Britain, and scores of the waifs and strays of British aristocracy began to turn their eyes towards Canada as a possible resource in the last emergency. It was said to be a cold and comfortless land, but it was surely preferable to the Fleet Prison or the Marshalsea, with the alternative of starvation or enlistment in the army. Many of these pimps and pandars to the whims or the passions of those in high station found their way to Quebec and Montreal, and were provided for at the public expense by being installed in places of greater or less emolument.*

When Upper Canada was set apart as a separate Province, in 1791, the field of operations was considerably extended. Indeed, the Upper Province soon came to be regarded with special favour by intending aspirants to office, as it was in all respects an English colony; whereas Lower Canada, in spite of all attempts to Anglicize it, remained much more French than English. Lower Canada, indeed, remained in some respects more French than any other part of the world, not even excepting France itself, for in that country the Great Revolution had swept away many effete institutions which were still retained in all their decrepitude among the Frenchmen of the New World. Now, the French Canadians, though most of the avenues to power and office were closed to them, composed a vast majority of the population. They did not take kindly to the British colonists, and declined to fraternize with them. The latter could bear this isolation, as they were comforted by the spoils of office, but their lives were rendered much less agreeable than they would have been in a colony where no such disturbing elements were known. Upper Canada was precisely such a colony. No part of Britain was more British in sentiment. In no part of the world would an expatriated Englishman find himself more entirely in harmony with his environment, from a purely patriotic point of view. What wonder, then, that Upper Canada was regarded by place-hunting emigrants from England

* It may perhaps be thought by some readers that the closing sentences of this paragraph are pitched in too high a key. Those who entertain that opinion will receive light on the subject by a careful perusal of various official reports issued just prior to the passing of the Quebec Act in 1774, and more especially of *A Cry from Quebec*, published at Montreal in 1809.

with wistful eyes? What wonder that an appointment to a public office in Upper Canada should have been regarded by such persons as a thing greatly to be coveted? Such aspirants were regarded with but little favour by Governor Simcoe. His great object was to launch the Province successfully on its career, and to lay the foundations of good government. He brought with him his own staff, selected by himself with a single eye to their fitness for the positions which they were respectively intended to fill. During his day there was little or no favouritism in public appointments, and but little, if anything, to find fault with in the conduct of the administration. His demission of office was almost immediately followed by a relaxation of discipline, and by a looseness in the management of the public business. As the years passed by, the Province became the resort of numerous office-seekers from beyond sea—half-pay officers and scions of good English, Scotch and Irish families, who sought to better their fortunes by expatriation. As they were, generally speaking, men of some education, and of manners more polished than were ordinarily found among the colonists, they naturally assimilated, and were drawn towards each other. They likewise coalesced, to some extent, with a few United Empire Loyalist families of exclusive pretensions, in whose veins the blood was supposed to possess an exceptionally cerulean tint. Several persons who had rapidly gained wealth by trade and speculation, and who had thereby acquired influence in the community, were also admitted. In an inconceivably short space of time this union of several influential cliques was followed by important results. They acquired a strength and influence which, in the then primitive state of the colony, carried all before them. They wormed themselves into all the more important offices, directed the Councils of the Sovereign's representative, and, in a word, became the power behind the Throne. In the early years of their domination they organized their forces with much tact and judgment, and did not develop their plans until they had been carefully matured. They may be said to have practically absorbed the Executive and Legislative Councils, as those bodies were entirely made up of persons either selected from among them or entirely subservient to their influence. No man, whatever his abilities, could hope to succeed in any

profession or calling in Upper Canada if he dared to declare himself in opposition to them. A few made the attempt, and failed most signally.

Such was the Family Compact. "For a long time," says Lord Durham,* writing in 1838, "this body of men, receiving at times accessions to its members, possessed almost all the highest public offices, by means of which, and of its influence in the Executive Council, it wielded all the powers of Government; it maintained influence in the Legislature by means of its predominance in the Legislative Council; and it disposed of the large number of petty posts which are in the patronage of the Government all over the Province. Successive Governors, as they came in their turn, are said to have either submitted quietly to its influence, or, after a short and unavailing struggle, to have yielded to this well-organized party the conduct of affairs. The bench, the magistracy, the high offices of the Episcopal Church, and a great part of the legal profession, are filled by the adherents of this party: by grant or purchase they have acquired nearly the whole of the waste lands of the Province; they are all-powerful in the chartered banks, and, till lately, shared among themselves almost exclusively all offices of trust and profit."

The influences which produced the Family Compact were not confined to Upper Canada. In the Lower Province, as well as in Nova Scotia and New Brunswick, similar causes led to similar results, and the term "Family Compact" has at one time or another been a familiar one in all the British North American colonies. But in none of them did the organization attain to such a plenitude of power as in this Province, and in none of them did it wield the sceptre of authority with so thorough an indifference to the principles of right and wrong. Its name is a rather indefinite, but not inapt characterization. Lord Durham refers to the term "Family Compact," as being not much more appropriate than party designations usually are; "inasmuch as," he writes, "there is, in truth, very little of family connexion among the persons thus united.†" "Much" is a saving clause, but if his Lordship had thought it worth his while to enquire minutely into the relations subsisting between the members of this body, he would have found that

* *Report on the Affairs of British North America*, English folio edition, p. 53. † *Ib.*

there had been a good many intermarriages between them, and that the pecuniary interests which bound them together had been welded by the most powerful of social bonds.* The designation "Family Compact," however, did not owe its origin to any combination of North American colonists, but was borrowed from the diplomatic history of Europe. By the treaty signed at Paris on the 15th of August, 1761, by representatives on behalf of France and Spain, the contracting parties agreed to guarantee each other's territories, to provide mutual succours by sea and land, and to consider the enemy of either as the enemy of both. This treaty, being contracted between the two branches of the House of Bourbon, is known to history as the Family Compact Treaty, and the name was adopted in the Canadas, as well as in the Maritime Provinces, to designate the combination which enjoyed a monopoly of power and place in the community, and among the members whereof there seemed to be a perfect, if unexpressed, understanding, that they were to make common cause against any and all persons who might attempt to diminish or destroy their influence.

* How far Lord Durham was justified in saying that there was "little of family connexion" among the members of the Compact will appear from the following "curious but accurate statement," prepared by Mr. W. L. Mackenzie for his *Sketches of Canada and the United States*, published in England in 1833. It will be found on pp. 405–409 of that work. "When I left Upper Canada last year," writes Mr. Mackenzie, "some of the offices, sinecures, and pensions of the Government were divided as follows:—No. 1. D'Arcy Boulton, senior, a retired pensioner, £500 sterling. 2. Henry, son to No. 1, Attorney-General and Bank Solicitor, £2400. 3. D'Arcy, son to No. 1, Auditor-General, Master in Chancery, Police Justice, etc. Income unknown. 4. William, son to No. 1, Church Missionary, King's College Professor, etc., £650. 5. George, son to No. 1, Registrar of Northumberland, Member of Assembly for Durham, etc. Income unknown. 6. John Beverley Robinson, brother-in-law to No. 3, Chief Justice of Upper Canada, Member for life of the Legislative Council, Speaker of ditto, £2000. 7. Peter, brother to No. 6, Member of the Executive Council, Member for life of the Legislative Council, Crown Land Commissioner, Surveyor-General of Woods, Clergy Reserve Commissioner, etc. £1300. 8. William, brother to Nos. 6 and 7, Postmaster of Newmarket, Member of Assembly for Simcoe, Government Contractor, Colonel of Militia, Justice of the Peace, etc. Income unknown. 9. Jonas Jones, brother-in-law to No. 2, Judge of the District Court in three districts containing eight counties, and filling a number of other offices. Income about £1000. 10. Charles, brother to No. 9, Member for life of Legislative Council, Justice of the Peace in twenty seven counties, etc. 11. Alpheus, brother to Nos. 9 and 10, Collector of Customs, Prescott, Postmaster at ditto, Agent for Government Bank at ditto, etc. Income £900. 12. Levius P. Sherwood, brother-in-law to Nos. 9, 10, 11, one of the Justices of the Court of King's Bench. Income £1000. 13. Henry, son to No. 12, Clerk of Assize, etc. 14. John Elmsley, son-in-law to No. 12, Member of the Legislative Council for life, Bank Director, Justice of the Peace, etc. 15. Charles Heward, nephew to No. 6, Clerk of the District Court, etc. Income £400. 16. James B. Macaulay, brother-in-law to Nos. 17 and 19, one of the Justices of the

The members of the Family Compact, with very few exceptions, were members of the Church of England, which, owing to the before-mentioned provisions in the Constitutional Act, they regarded as the State Church of Upper Canada, established by law, and entitled to the special veneration of the inhabitants. They accounted all persons as members of the Church of England who were not actual members of some other religious body, and in enumerating the people for statistical purposes they sometimes even

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Court of King's Bench. Income £1000. 17. CHRISTOPHER ALEXANDER HAGERMAN, brother-in-law to No. 16, Solicitor-General. £800. 18. JOHN M'GILL, a relation of Nos. 16 and 17, Legislative Councillor for life. Pensioner, £500. 19 and 20. W. ALLAN and GEORGE CROOKSHANKS, connexions by marriage of 16 and 17, Legislative Councillors for life, the latter President of the Bank. £500. 21. HENRY JONES, cousin to Nos. 9, 10, etc., Postmaster of Brockville, Justice of the Peace, Member of Assembly for Brockville. Income unknown. 22. WILLIAM DUMMER POWELL, father of No. 24, Legislative Councillor for life, Justice of the Peace, Pensioner. Pension, £1000. 23. SAMUEL PETERS JARVIS, son-in-law to No. 22, Clerk of the Crown in Chancery, Deputy-Secretary of the Province, Bank Director, etc. Income unknown. 24. GRANT, son to No. 22, Clerk of the Legislative Council, Police Justice, Judge Home District Court, Official Principal of Probate Court, Commissioner of Customs, etc. Income £675. 25. WILLIAM M., brother to 23, High Sheriff Gore District. Income from £500 to £800. 26. WILLIAM B., cousin to Nos. 23 and 25, High Sheriff, Home District, Member of Assembly. Income £900. 27. ADIEL SHERWOOD, cousin to No. 12, High Sheriff of Johnstown, and Treasurer of that district. Income from £500 to £800. 28. GEORGE SHERWOOD, son to No. 12, Clerk of Assize. 29. JOHN STRACHAN, their family tutor and political schoolmaster, archdeacon and rector of York, Member of the Executive and Legislative Councils, President of the University, President of the Board of Education, and twenty other situations. Income, on an average of years, upwards of £1800. 30. THOMAS MERCER JONES, son-in-law to No. 29, associated with No. 19, as the Canada Company's Agents and Managers in Canada. This family connexion rules Upper Canada according to its own good pleasure, and has no efficient check from this country to guard the people against its acts of tyranny and oppression. It includes the whole of the judges of the supreme civil and criminal tribunal (Nos. 6, 12, and 16) —active Tory politicians. Judge Macaulay was a clerk in the office of No. 2, not long since. It includes half the Executive Council or provincial cabinet. It includes the Speaker and other eight Members of the Legislative Council. It includes the persons who have the control of the Canada Land Company's monopoly. It includes the President and Solicitor of the Bank, and about half the Bank Directors ; together with shareholders, holding, to the best of my recollection, about 1800 shares. And it included the crown lawyers until last March, when they carried their opposition to Viscount Goderich's measures of reform to such a height as personally to insult the government, and to declare their belief that he had not the royal authority for his despatches. They were then removed ; but, with this exception, the chain remains unbroken. This family compact surround the Lieutenant-Governor, and mould him, like wax, to their will ; they fill every office with their relatives, dependants, and partisans ; by them justices of the peace and officers of the militia are made and unmade ; they have increased the number of the Legislative Council by recommending, through the Governor, half a dozen of nobodies and a few placemen, pensioners, and individuals of well-known narrow and bigoted principles ; the whole of the revenues of Upper Canada are in reality at their mercy ;—they are Paymasters, Receivers, Auditors, King, Lords, and Commons ! "

went so far as to include the infant children of Dissenters as Episcopalians. They sought to defend the alleged establishment of a State Church in Canada by arguments which it is astonishing to think that men of education and intelligence should ever have stooped to employ. "There should be in every Christian country an established religion," said Dr. Strachan, in his evidence before the Select Committee on Grievances, in 1835, "otherwise it is not a Christian but an infidel country."* According to their theory, one of the principal ends of the Government of Upper Canada was the propagation of religious truth as set forth in the doctrines of the Church of England. True, the arguments on the subject were not so well understood then as now. Mr. Gladstone's little volume on "The State in its Relations with the Church," and Macaulay's answer thereto in the *Edinburgh Review*, had not then been published. But some of the most conclusive arguments adduced by Macaulay were as old as the world itself; and even Mr. Gladstone, in all his youthful exuberance, did not venture to take so preposterous a stand as was assumed by the upholders of a State Church in this Province. Their bigotry and intolerance were utterly out of keeping with the times in which they lived, and were better suited to the days of Archbishop Laud or Sir Robert Filmer. Of that heaven-born charity which suffereth long, and is kind; which vaunteth not itself, and is not puffed up; which seeketh not her own, and is not easily provoked; which thinketh no evil; which rejoiceth not in iniquity, but rejoiceth in the truth; which beareth all things, believeth all things, endureth all things—of the spirit which impels to such a state of mind as this, we find few traces in the lives and writings of the upholders of State-Churchism in Upper Canada in those days. We find, on the contrary, much unkindness, much vaunting of themselves, much selfish conceit, much seeking, not only of their own, but of that which of right belonged to their neighbours. The champions of ecclesiastical monopoly were easily provoked to anger, and to thinking and speaking all manner of evil of those who differed from them as to the distribution of the Clergy Reserves. Roman Catholicism they contemplated with a certain

* See his evidence annexed to the Committee's Report, p. 86.

amount of toleration, as the Roman Catholic hierarchy yielded the Government an unwavering support in return for the freedom and privileges which they enjoyed. But their toleration was not broad enough to cover any other form of religious belief. Dissent, in all its multiform phases, they looked upon with mingled abhorrence and contempt—as a thing to be shunned and tabooed by all right-minded persons. Dissenting ministers of religion were regarded as "low fellows," whom it was no sin to persecute, and, if possible, drive out of the country. Comparatively few of the latter were permitted to solemnize matrimony during the first forty years of the Province's history. By the statute 38 George III., chapter 4, passed in 1798, the privilege of doing so was accorded to ministers of "The Church of Scotland, or Lutherans or Calvinists;" but it was hedged about with cumbrous restrictions which must have been felt as humiliating and unnecessary. No person was to be regarded as a minister under the Act until he had appeared before the Justices of the Peace in Quarter Sessions, and had produced satisfactory credentials of his ordination. He was also compelled to take the oath of allegiance. Even after complying with all formalities, his functions were restricted to cases where one or both of the parties to be joined together belonged to his own religious society. Ministers of other denominations, including those of the Methodist body, which was the most numerous religious community in the Province, were not allowed the privilege of solemnizing marriage rites till the year 1831. The ignominious disqualification was removed by the statute 11 George IV., chapter 36, which was passed in 1830, but which did not receive the royal assent until the following year. A similar measure had repeatedly been passed by the Assembly in former sessions, but had as often been rejected by the Upper House. Before the law was finally and equitably settled as above mentioned, several ministers of religion had been tried and banished from the Province for having ventured to solemnize matrimony without legal authority. It is said that in one case where a minister was tried on a charge of this kind, the accused protested against his sentence, alleging that the Chief Justice, who presided at the trial, had himself sanctioned the performance of the ceremony. The Chief Justice, being called upon to descend from the judgment seat and give evidence as to

this fact, declined to do so; but he afterwards procured a pardon for the prisoner.*

The Compact always contained within its ranks a few persons of more than average ability. Some of them doubtless believed that the course pursued by their organization was for the advantage of the colony, though, reasoning by the light of present knowledge, it is difficult to comprehend how men of even moderate perspicacity and judgment could have brought themselves to such a conclusion. It was, however, inevitable that persons of such narrow and contracted views—persons to whom self and pelf were the mainsprings of life—should degenerate, mentally as well as morally. The persons composing the second generation were, with very few exceptions, striking illustrations of the doctrine of the descent of man. Their sires had been men of energy and force of character. They themselves were—to borrow a phrase from the acting drama—the mere walking gentlemen of the colony. The sires had originated a bold and determined policy, and had from first to last pursued it with consistent vigour. The sons had neither brains to conceive nor discretion to carry out the conceptions of others. The sires had been persons whom it had been possible for the commonalty to respect. The sons were persons whom it was impossible not to despise. Surely a more superlatively commonplace and contemptible race of human beings has seldom been seen on the earth than four-fifths of the second generation of this bastard aristocracy of Upper Canada. It bore no resemblance to any other aristocracy whereof history has preserved any record. The old Roman commonalty, while they groaned beneath the iron heel of tyranny, were one and all conscious of a secret pride in their imperial oppressors. For the Roman aristocracy was an aristocracy of nature. The Roman patricians made foreign rulers to crouch and tremble at the name of Rome. Their triumphs were the triumphs of the nation. Caius of Corioli, Furius Camillus, Titus Capitolinus, were names the mere utterance of which stirred the Roman blood like the blast of a trumpet. For many a long year after one haughty dictator had slept his last sleep beneath the walls

* Gourlay, commenting upon this episode, remarks: "Who pardoned all the poor sinners that for years had been getting bastards, and who legitimized these, was not determined when I bade farewell to Upper Canada."—*Statistical Account*, Vol. 2, p. 348.

of Præneste, and after another had taken his final plunge beneath the yellow Tiber or from the Tarpeian rock, their exploits furnished themes for tale and song around the Roman camp-fires. These puissant representatives of the dominant class had shown little sympathy for the plebeians, upon whom they had looked down from a lofty height, and towards whom they had ever borne themselves with haughtiness and disdain. But their pride was a something to be tolerated by Romans of every degree, for they had achieved much glory for the Roman name. In the words of one who has interpreted the sentiment of those times with rare felicity, Rome could bear the pride of him of whom herself was proud. The old French noblesse, again, were not devoid of redeeming qualities. Their galling yoke would not have been borne from reign to reign, and through century after century, even by such seeming reconcileables as constituted the bulk of the French populace during the ante-Revolutionary period, if they had all been like the wicked St. Evrémonde of Mr. Dickens's tragic story. As a class, they had a subtle French grace about them which rendered their most grievous exactions less hard to bear than were the exactions of their eastern neighbours. They were an unmistakable *haute noblesse*, ever polished and dignified. Some of them, like Philippe Egalité, had the cunning, when the time of trial arrived, to bend to the popular storm, and even to affect a zeal for citizenship. Comparatively few of them were at once *blasé* and brainless. It may be doubted if a single one of them combined—as did many of the rank and file of the second generation of the Family Compact of Upper Canada—the pretensions of an aristocrat with the sentiments of a boor and the intellectual development of a child. Yet further. The feeling of veneration with which the English commonalty have for centuries regarded the House of Lords is easy enough to understand. That feeling seems to be rapidly passing away, if, indeed, it has not already departed. But it would not have endured from the time of the Plantagenets to the time of Queen Victoria if it had not had some substantial foundation to rest upon. The House of Lords has always contained a number of men of high integrity and ability. Take it for all and all, it is probably the most just-minded and intellectual aristocratic assembly the world has ever seen. This may not be very high praise, but it may at least be taken for what it is worth.

Its individual members are seldom brought sufficiently near to the lower order of the commonalty to enable the latter to detect their weaknesses. Their wealth, prestige and social position give them a vast influence, while at the same time their legislative powers are held in check by the direct representatives of the people. Most of these conditions were directly reversed in Upper Canada, where the members of the dominant faction were brought into the closest relations with the people generally, insomuch that their many deficiencies could not be concealed. Such wealth as they had they were too often known to have obtained at the expense of the rest of the community. The Lower House formed no efficacious check upon them, for they either managed to return a sufficient number of their tools to control the vote in that body, or else they rendered the Assembly's operations of no avail by means of their influence in the Legislative Council. They had none of the graceful suavity of the Lower Canadian seigneurs. Nor could they boast of the superiority derived from a liberal education. Many of them—even including some of those who held high public offices—were so illiterate that they were unable to write a simple business letter without committing errors of orthography of which any one but Artemus Ward or Jeames de la Pluche might well feel ashamed.

Nearly all the leading spirits of this strangely-assorted oligarchy were either wealthy or on the direct road to wealth. Being comfortably provided for at the public cost, in the form of fat offices or wild lands, or both, they assumed a swelling port, and aped, as best they knew how, the manners and customs of the upper classes in Great Britain. They built their dwellings in imitation of old-fashioned English manor-houses, with a variety of wings and gables, and with broad entrance halls which in an emergency might have served the purpose of presence-chambers. They dined long and late, and with much old-world pomp and ceremonial. They drove out in coaches emblazoned with heraldic bearings, and attended by broad-calfed flunkeys in family livery. Certain social observances of the early Georgian era, long since effete and worn out in England, flourished in the social life of Little York down to a period within the memory of many persons who are still living. The aristocratic clique which preserved these customs was in the highest degree rigid and exclusive. No outsider was admitted into the charmed

circle unless he came duly ticketed and accredited. The attempt to transplant the usages of an old and advanced state of society into the primitive streets and lanes of such places as York, Kingston, and Woodstock was for a time more successful than might be supposed. Such of the families as had been to the manner born carried off these observances with considerable grace. They had brought their traditions with them across the Atlantic, and though such traditions were not well suited to the genius of a young and sparsely-settled colony, they were at least maintained with some regard to the sources whence they had been derived. With the pretenders who formed a portion of the clique, and who had been admitted into it for special political reasons, the attempt to copy the habits of their social superiors was, generally speaking, less satisfactory. There was, in truth, an inner social circle which these latter were never invited to join. They, however, enjoyed all the political and pecuniary advantages arising from their connection, and were not easily distinguishable by outsiders from the very head and front of the organization.

So far as to the wealthy members of the ruling faction. But there were a good many of them who not only were not wealthy, but who were in positively indigent circumstances. These, for the most part, were members of old country families who had sent them to Canada with the sole object of getting rid of them. Others were half-pay officers who had spent their whole fortunes in settling on land, after which they had found themselves unable to make a livelihood, and had then sold their property for as much—or as little—as they could manage to get. These latter, after having disposed of their lands, generally repaired to the towns, and most of them sooner or later found their way to the Provincial capital. There they became obedient slaves of those in authority, and picked up a precarious livelihood by making themselves useful in various ways. The Executive could always find a certain amount of work for such persons, though, if the truth must be told, the supply was often greater than the demand. The code of social ethics in vogue among this class was such as might have been expected from persons who had been reared to regard themselves as the objects of a special dispensation of fortune. They looked upon manual labour as

degrading. Any person, no matter what his abilities, who earned a livelihood by the sweat of his brow, or even by honest trade, was considered as no fit company for the brood of parasites who hung on to the heels of the Compact, and who nevertheless did not hesitate to perform tasks from which the average costermonger would have shrunk in disgust. Their employers occasionally admitted them to their tables, and even to some degree of social intimacy. More frequently they presented them with their cast-off clothing, with new gowns for their wives at Christmas, or—when things were at a remarkably low ebb—with a hundredweight of flour or half a barrel of mess pork. Yet the recipients of these favours piqued themselves upon their good birth and high connexions, and would have felt themselves insulted if anyone had ventured to hint that they should visit, upon terms of equality, with the grocer or the butcher in the next street.

The reader now has before him a sufficient array of facts to enable him to form a pretty accurate conception of the state of social life in Upper Canada during ante-Rebellion times. It was a matter of course that such a monopoly of power as was possessed and exercised by the ruling faction should excite envy and opposition on the part of those who did not revel in its smiles or share in its plunder. Loud murmurings began to make themselves heard against the delay and partiality in the land-granting department, and against the corrupt manner in which the public affairs of the Province generally were carried on. Before the close of Governor Hunter's *régime* these murmurings had become loud enough to occasion no little disquiet to some of the officials who had most reason to dread enquiry and investigation. The abuses were greater in some branches of the service than in others, but peculation prevailed to a greater or less extent almost everywhere. The Indian department was notorious for the corruption of its officials. A sum of sixty thousand pounds sterling was annually granted by the Imperial Government for distribution among the various tribes, and for the payment of agents and interpreters. The distribution among the Indians chiefly took the form of commodities which had a particular fascination for the mind of the noble savage—such commodities, for instance, as muskets, powder, bullets, knives, tomahawks,

hatchets, blankets, spangles, pocket mirrors, and—last, but by no means least—fire-water. The opportunities which this grant afforded for peculation and plunder were too tempting to be resisted. The agents and their subordinates, from highest to lowest, owed their positions to their servility and usefulness to those in authority. So long as they proved serviceable and obedient to their masters, there was not much likelihood of their being called to serious account for any iniquities they might commit towards Mohawk or Seneca, Oneida or Mississaga. By way of consequence, the Indians were robbed and the Government was robbed; and the robbers, feeling secure of protection from their superiors, plied their nefarious traffic with impunity.* There were equally culpable but less notorious abuses of power in other branches of the service. Probably not one in ten of these ever came to light, but from time to time there were awkward revelations which could not be suppressed. All these things combined to beget a widespread lack of confidence in the official clique. The want of confidence, not without good reason, extended even to the administrators of the law. The judges, as already mentioned, held office at the will of the Executive, and, at least in some instances, were shamelessly servile and corrupt. This led to their dicta being disregarded by sturdy juries who cared less for the letter of the law than for its spirit. Mr. John Mills Jackson, in his "View of the Political Situation of the Province of Upper Canada," published in 1809, speaks of an instance where the people became tumultuous, and broke the public stocks in the presence of the Chief Justice.† The public distrust of the administrators of the law does not seem to have been confined to the judges of the Superior Courts. It extended to the rural magistrates, some of whom turned their offices to commodity in a manner which would have excited the admiration of Falstaff himself. "The shopkeepers," writes Mr. Jackson, "are Justices of Peace. They have the

*Those who wish to gain an insight into some of the most revolting features of this traffic may consult *Claws and the Clauses*, a pamphlet published at Buffalo in 1818; also *Gourlay*, vol. 2, pp. 486, 487; together with Jackson's pamphlet referred to in the text.

†This must have been Chief Justice Thomas Scott, after whom Scott Street, Toronto, was called. He was Chief Justice from August, 1806, to Michaelmas Term, 1816. He is referred to by Dr. Scadding in *Toronto of Old*, p. 51, as "a man of fine culture, spoken of affectionately by those who knew him." A picture of him in his decline is presented on page 130 of the same work.

means of extortion, and the power of enforcing payments. They are first the criminals, then the judges; and the court of appeal seems to be so constructed as to prevent an honest verdict from passing into effect. The practice of the court is unjust, oppressive, and influenced. Favourite attorneys were made deputy clerks of the peace, so that process might be entered and writs obtained most partially. The crown lawyer is allowed nearly seven pounds sterling for every criminal prosecution! an inducement to listen to trifling complaints, and prefer frivolous indictments, when, if power was gratified and independence harassed, it was a sufficient excuse for an inflated contingent account." The author of this scathing philippic against petty oppression proceeds to recount a case wherein an action was brought against a magistrate who had exerted his authority in an illegal and oppressive manner. A verdict was obtained against him for a hundred pounds. An application was made to the Court of King's Bench to set the verdict aside, which was rejected; whereupon the clerk of the court in which the judgment had been obtained was ordered by the Crown lawyer not to issue execution. The clerk knew better than to disobey an order from such a source, and the plaintiff accordingly took nothing by his verdict. The unrighteous magistrate escaped the penalty of his misdeeds, and furnished a sort of standing precedent for magisterial iniquity. Other equally flagrant perversions of justice are recorded by the same authority. An illegal and unjustifiable extent issued, at the suit of the Crown, against one of the civil officers. It lasted for years; yet the officer dared not resist oppression by applying for justice. "When [the extent] was as imperiously taken off as it was arbitrarily laid on," writes Mr. Jackson, "the sheriff dared not apply for fees expended in holding possession under the writ, or the printer sue for the money voted him by the House of Assembly for printing their journals. The surveyors could not obtain the money they had actually expended in the public service, nor the people find redress for extorted fees. Therefore, when there was neither substance nor shadow of law or justice, but the will of power was the rule of decision, the public mind was agitated in the extreme, and universal gloom pervaded the Province."

The discontent produced by official tyranny was however almost impotent as against the wrong-doers, who were so strongly entrenched

in their places that it seemed as though nothing could shake them. Many of them, conscious of their misconduct, doubtless felt secret misgivings whenever any specially significant outburst of popular dissatisfaction occurred. But for many years they were able to present a united and brazen front, and to crush anyone who dared to so much as wag a finger against them. It was intimated on a former page that Robert Gourlay was not the first victim of Executive tyranny. The first conspicuous victim of whom any record has been preserved was Mr. Robert Thorpe, an English barrister of much learning and acumen, who in 1805 was appointed a puisne judge of the Court of King's Bench for Upper Canada. Previous to his arrival in this country Mr. Thorpe had never been remarkable for any specially liberal opinions, but he was a man of enlightened mind, and actuated by an honest desire to do his duty. He was not long in perceiving that the administration of justice in this Province was little better than a hollow mockery. He resolved to do what one man could to restore public confidence in the judicial bench, and his court erelong became a popular forum for honest litigants, for it was evident to all that he held the scales of justice with an even hand, and was not to be either cajoled or bullied into perverting the law. Before he had been a twelvemonth in the country he was known far and wide as an upright judge, and as a sort of champion of popular rights. Grand juries took him into their confidence, and tabulated their grievances before him. These were laid by him before the authorities at York, upon his return from circuit; a proceeding which was quite sufficient to bring down upon his head the opposition of the faction which flourished by reason of those very grievances. The whole of the Family Compact influence arrayed itself against him in deadly enmity. Francis Gore arrived in the capacity of Lieutenant-Governor in the summer of 1806. He was informed by his Councillors that Judge Thorpe was a dangerous and revolutionary personage. It was certain that the past year had been signalized by a decided propensity on the part of the people to assert themselves against the intolerable exactions of their oppressors, and that a spirit of opposition was on the increase throughout the land. Governor Gore and his Councillors reversed the inductive process, and attributed the popular discontent to the influence of the

new judge. This seeming conviction on their parts was strengthened by certain remarks of Judge Thorpe himself, made in reply to an address from the Grand Jury of the London District. "The art of governing," said he, "is a difficult science. Knowledge is not instinctive, and the days of inspiration have passed away. Therefore, when there was neither talent, education, information, nor even manners in the Administration, little could be expected, and nothing was produced." The reference here is manifestly to the *régime* of Governor Hunter and Commodore Grant; and the intimation is that better things are to be hoped for under the recently-arrived Governor. "But," continued the judge, "there is an ultimate point of depression, as well as of exaltation, from whence all human affairs naturally advance or recede. Therefore, proportionate to your depression, we may expect your progress in prosperity will advance with accelerated velocity." He also in the course of his address, inveighed against the Alien Act of 1804. When he reached York, at the close of the circuit, he laid before the new Lieutenant-Governor the various recapitulations of grievances which had been entrusted to him. They were received by Mr. Gore and his Councillors with a very ill grace. The complaints from the London District were stated with great vigour and lucidity, and as they had got into print they could not be suppressed or wholly ignored. An attempt was made to show that the chapter of grievances had been presented by the jurors, not because there was really anything of importance to complain of, but because Judge Thorpe himself had instigated them to such a course. As this charge was openly made, Mr. Thorpe in his capacity of a Justice of the King's Bench, caused a proceeding of the nature of *scandalum magnatum* to be instituted. His brother judges, however, some of whom were members of the Executive Council, and all of whom were subject to strong influences from that quarter, ruled that the proceeding could not be maintained, and it accordingly fell through. An attempt was also made, first to intimidate, and afterwards to corrupt the Grand Jury. A letter was sent to them from the office of the Lieutenant-Governor, requesting them to state the grounds of their complaints more specifically. The recipients responded by preparing and forwarding a stronger case than before. A recantation was then drawn up by a skilful hand,

and presented to each individual member of the Jury, a reward being at the same time offered as an inducement to sign it. The jurymen, however, were not prepared to barter away their liberties in this manner, and the attempt wholly failed. While the Executive were deliberating as to how they could most effectually strike Judge Thorpe, a vacancy occurred in the representation of one of the constituencies in the Home District. In those times, as has already been seen, a judgeship was no disqualification for political life, and a deputation waited on Mr. Thorpe with a numerously signed address, requesting him to become their representative. He replied that he would not become a partisan, but that if he were returned to Parliament he would not hesitate to do his duty. No sooner did it become known that "the Radical Judge," as he was called, was a candidate for the Assembly than the leading spirits of the Compact aroused themselves to defeat him. This was natural enough. That they should employ against him every means which their ingenuity could devise—among others, bribery, vilification and deliberate slander—that also was natural, when the time and persons are considered. "Every engine within the reach of authority," writes Mr. Jackson, "was used for the purpose of defeating the wishes of the people on this occasion. All interests were required to yield in favour of the candidate most likely to succeed as against Mr. Thorpe. Any person in employment, in expectation of, or entitled to land, was gratified, promised, or threatened; magistrates were made and unmade, as best suited the purposes of electioneering; grants were given; fees excused, or promised to be paid by those high in authority. Even domestics were bribed with places, land, and money, to vilify and accuse, by direct falsehoods, the most upright, serviceable and esteemed persons in the Province." For once public opinion proved too strong for Family Compact influence. Judge Thorpe was returned, and great things were hoped for from his career in Parliament. But the triumph of freedom was short-lived. The Compact was too strong to be opposed by the multitude with impunity. Lieutenant-Governor Gore was subservient to its wishes, and besides he had by this time come to hate the popular judge on his own account, and his mind was fully made up to solicit from the Colonial Secretary Judge

Thorpe's recall. One of his private letters, written from Kingston, during a journey from York to Montreal, several months after the Judge's election to the Assembly, announces this resolution in unmistakable terms. "The object of Mr. T.'s [Thorpe's] emissions," he writes, "appears to be to persuade the people to turn every gentleman out of the House of Assembly. However, keep your temper with the rascals, I beseech you. I shall represent everything at St. James'." He was as good as his word, and in October, 1807, the announcement was made in the *Gazette* that the Lieutenant-Governor had been instructed to suspend Mr. Thorpe from his judgeship, which we may be quite sure was done without unnecessary loss of time.

Thus did might continue to triumph over right. There was not the slightest imputation of any sort against the Judge's character. His professional attainments were high; his personal character without a stain. His continued presence in Canada would have been a blessing to all but the race of tyrants who trampled on popular liberty. Yet he was removed because he respected himself and his office too highly to pervert judgment, and because he bade fair to abridge the rule of corruption. Upon his return to England the Colonial Office urged nothing whatever against him, and merely suggested, by way of justification for his recall, that his stay in Upper Canada would have led to perpetual disturbance of the public tranquillity. He instituted proceedings in one of the English courts against Mr. Gore, who was convicted of libel, but who escaped much more easily than he deserved with a fine of trifling amount. By way of recompense for his recall from Upper Canada, Judge Thorpe was appointed Chief Justice of Sierra Leone. There he remained for two years, by which time his constitution had become so much broken by the climate that he was compelled to return home. At the request of a number of the inhabitants he carried with him to England a petition complaining of certain abuses of power there. For this he was discarded by the Ministry of the day. His appointment as Chief Justice was cancelled, and another judge was sent out to West Africa in his stead. The rest of his life was passed in obscurity and neglect, and when he died his family were left without any provision for their future. Such was the untoward fate of an

honourable and high-minded man, whose only fault was that he was too pure for the times in which he lived, and for the people among whom his lot was cast.

Another early victim, whose life record seems to contradict the adage that honesty is the best policy, was Surveyor-General Wyatt. There is no need to go minutely into the particulars of his case. He was universally recognized as a competent and honest official, insomuch that it was currently said of him that he was too good for the masters whom he served. But he ventured to interfere on behalf of one of the subordinates in his office, who had been refused a stipend to which Mr. Wyatt considered him entitled. Then, he presumed to oppose the Council in respect of an irregular purchase of a large tract of land from the Mississaga Indians. Finally, he went so far as to profess a high degree of respect for the manly and independent conduct of Judge Thorpe. The secret conclave speedily pronounced his doom. No one ventured to allege any fault against him, yet he was deprived of his situation by the Lieutenant-Governor, and a pliable tool was installed in his office.

Joseph Willcocks had a more bitter experience still. He was an Irishman, of liberal education, and of much energy of character, whose influence in official circles was wide enough to obtain for him the post of Sheriff of the Home District. For several years no occasion for any difference of opinion arose between him and his superiors. He was known as a competent officer, who discharged his duties with great consideration for the impecunious and unfortunate. But his frequent official peregrinations through the Home District enabled him to see with his own eyes the disastrous effects of the Clergy Reserves, of the land-granting system, and of Family Compact domination generally; and on several occasions he had sufficient courage to express his opinions thereupon. Attempts were made to silence him, first by remonstrances, and afterwards by threats, but all to no purpose. When Judge Thorpe began to figure as a sort of popular tribune, Willcocks declared himself as being also on the side of the people. When the Judge became a candidate for Parliament, the Sheriff, who had a vote in the constituency, recorded it in his favour. For this he shared the fate of the Surveyor-General, and was promptly dismissed from office by the Lieutenant-

Governor. But he came of a fighting stock, and was not to be suppressed by the mere circumstance of being deprived of an official income. He started a newspaper called *The Upper Canada Guardian, or Freeman's Journal.* In this sheet, which was edited by Mr. Willcocks himself, various desirable measures of reform were advocated, and the dominant faction were from time to time referred to in opprobrious, but certainly not untruthful or unmerited language. The paper obtained a considerable circulation, and soon made its editor an object of bitter hatred on the part of the authorities. The vilest abuse was poured out upon him, and he was subjected to a course of persecution well-nigh as grievous as subsequently fell to the lot of Robert Gourlay. Governor Gore himself, in a letter still extant, written in 1807, refers to him as "that execrable monster who would deluge the Province with blood." The execrable monster's influence, however, continued to grow, and upon Judge Thorpe's retirement from Upper Canada, he was returned to the Assembly in his stead, for the West Riding of the County of York, the First Riding of the County of Lincoln, and the County of Haldimand. As he was a ready and powerful speaker, as well as a vigorous writer, it was felt that he would soon become intolerable if his career were not effectively checked. He was accordingly tried before the Assembly on a frivolous charge of having, in a private conversation held at the house of a Mr. Glennan, in York, spoken disrespectfully of some of the members. The proceedings were the veriest travesty of the forms of justice. The accused was found guilty, and committed to the common jail of the Home District, there to remain during the sitting of Parliament.* This indignity he was compelled to suffer, being confined for many weeks in a small close cell, which he was not permitted to leave for a single moment. He was further wrought upon by informations for libel, as well as by secret inquisitions into his private affairs. After his enlargement he continued to publish his paper, but he was so tortured by the incessant persecutions to which he was subjected that he could accomplish little or nothing in the way of reform. From some of his votes in the Assembly it would

*For a full account of these infamous proceedings, the reader is referred to *The Upper Canada Guardian* of February 6th and March 18th, 1808, quoted by Gourlay in his *Statistical Account*, Vol. 2, pp. 655—662.

appear that he made tacit overtures towards reconciliation with his enemies,* but he had offended too deeply to be forgiven, and their rancour was not to be appeased. Eventually he was compelled to relinquish the publication of the *Guardian* for want of funds to carry it on. Notwithstanding all that he had endured, his loyalty remained unshaken, and when the War of 1812† broke out he responded to the call for volunteers by shouldering his musket and doing his devoirs like a man at the battle of Queenston Heights. Even this obtained for him neither complaisance nor immunity from abuse. He found himself ruined in fortune, opposed and hated by those in authority, without any prospect before him but starvation. It is not singular that a man subjected to such conditions should become disheartened. In a moment of exasperation he deserted the ranks where he had been held as of so little account. Accompanied by a small body of Canadian volunteers, he repaired to the camp of the enemy, where he offered his services, and obtained a colonel's commission. He served under Major-General Brown at the siege of Fort Erie, where he was slain while planting a guard.

Such are three of the most notable examples of ministerial tyranny in comparatively early times. As before mentioned, they attracted less widespread attention than did Mr. Gourlay's case some years later, because, though they were signal instances of the abuse of power, they were not marked by such refinement in cruelty, and because they appealed to the political sympathies of comparatively few. In the time of Judge Thorpe, Wyatt and Willcocks, the dominating class not only held a monopoly of power, but they and their adherents were numerically in the ascendant. At the time of Gourlay's persecution the population was much more evenly divided. The oligarchy still had control of all the avenues to power, but there was a large and steadily-increasing class in the community who recognized the fact that many changes were

* See an extract from the minutes of the proceedings in the Assembly, 10th March, 1810, quoted by Gourlay, Vol. 2, pp. 328, 329. See also Gourlay's remarks thereon, Vol. 2, pp. 334, 335.

† There is reason to believe that the discontent begotten of the abuse of power in Canada was one of the inducements to this attempt on the part of the United States, the Government of which was led to believe that Canadians generally would welcome any relief from the yoke which the Compact had placed upon their necks.

necessary before Upper Canada could become a prosperous and well-governed colony, and a satisfactory place of abode for the average British immigrant.

In closing this hasty review of the nature and effects of Family Compact domination in Upper Canada, I would not be understood as pronouncing a sweeping condemnation upon all the individual members of that body. John Beverley Robinson, for instance, though he lent himself to many high-handed acts of oppression, was a man of undoubted ability, and of a character which inspired respect. His descendants are to-day among the most respected and influential members of society in our Provincial capital. Several others were men of high personal character, and of abilities above the average. They acted in accordance with time and circumstance, and must be supposed to have done so conscientiously. But such persons as these composed but a very slender proportion of the Compact's entire membership. The rank and file were of a totally different complexion. The characteristics of the more poverty-stricken among them have already been hinted at; but, independently of these, there were many who were well-to-do, and who held their heads high in the air, who were nevertheless very ill qualified to win admiration for the caste to which they belonged. To state the simple truth, most of them were very ordinary commonplace personages, respectable, sapless, idealess—what Dr. Johnson would have characterized as exceedingly barren rascals. Some were of obscure origin, and would have been hard put to it if required to trace their ancestry beyond a single generation. Of these latter, a few, as has already been seen, had amassed wealth by trade or speculation, and had made their way into the exclusive circle by a fortunate combination of circumstances.

Among the Compact, then, the number of persons of good birth and descent, possessed of sufficient qualifications to justify their aristocratic predilections, and of sufficient capacity to enable them to direct the colonial policy, was small. And it must by no means be supposed that all the good blood in the Province was confined to the Compact. There were many persons among the pioneers of Upper Canada of gentle nurture and breeding, who nevertheless scorned to pose in the character of aristocrats in a land where such assumptions were altogether out of

place, and who manfully accommodated themselves to their primitive surroundings. As has been well remarked by Mr. MacMullen,* "While they learned to wield the axe and swing the cradle with the energy and skill of the roughest backwoodsman, they retained their polished manners, their literary tastes, their love for the beautiful and the elegant; and thus exercised the most beneficial influence upon their rustic neighbours. In the absence of schools, of churches, of most of the refining influences of civilized society, this class of the early settlers of Upper Canada were foremost in usefulness. Their superior education, their well-bred manners, their more refined habits, raised them in the estimation of the rural population, who soon tacitly admitted a superiority which would never have been conceded [had it been] more directly asserted." Most, though not all, of these gentlemen were Tories, and, with hardly an exception, preserved their loyalty through all chances and changes. During the War of 1812-'15, and again during the agitation arising out of the Rebellion, they proved true to their Tory instincts, and rallied to the side of the Government with ready fervour. Their social proclivities were equally removed from the rude boorishness of the ordinary settler as from the pretence and ceremonial of the clique of self-constituted aristocrats. They generally preserved a modicum of state in the regulation of their household affairs, though they kept aloof from the Compact and its practices, and devoted themselves to various branches of industry—among others, to the education of youth; to the practice of the learned professions; to the opening and cultivating of new avenues of commerce; and to reducing the pathless forests to arable and smiling fields.

One other fact it is essential to bear in mind, in estimating the effects of the Compact's *régime*. In seizing upon all the official and other spoils within their reach, and in trampling upon the liberties of the people, the magnates of Upper Canada were merely treading in the footsteps of the Tite Barnacles of Great Britain. The period was one of transition, all over the civilized world. Popular rights were but imperfectly understood, and the idea that good government is best served by the extension of justice and equal rights to all classes was only beginning to

* *History of Canada*, p. 243.

dawn upon the minds of public men, even in old and long-established communities. That Canada was not in advance of the times is not to be wondered at; but the ordeal through which she was compelled to pass on the way to full and assured liberty forms an epoch highly necessary to be understood and frequently remembered by all who appreciate the blessings which are the birthright of every Canadian of the present day. A knowledge of the principles and practices of the Family Compact in the olden days constitutes the most effectual guarantee that such days can never return, and that neither our children nor our children's children will ever be compelled to fight over again the battle which was so long and so patiently waged by their ancestors.

CHAPTER IV.

FATHERS OF REFORM.

THE history of Upper Canada, from the time of Mr. Gourlay's banishment, in 1819, down to the actual outbreak of rebellion, is largely made up of a succession of abuses on the part of the Executive, and of more or less passive endurance on the part of the great body of the people. As has been intimated, the Gourlay prosecutions and their attendant circumstances aroused much popular indignation, and led to the formation of an organized Opposition. During the session of 1820 the "Gagging Bill," as it was called, which had been introduced and carried through the Assembly under the auspices of Mr. Jonas Jones* two years before, was repealed,† and the holding of conventions was no longer prohibited by law. It is a fact worth mentioning that Attorney-General Robinson was the only member who recorded his vote against the repealing statute, whereas at the time of the enactment of the original repressive law in 1818 only one vote had been given against it. Such a change of opinion among the members of the Assembly within so brief a space of time is in itself significant of the progress of liberal views among the people generally.

The vote on this repealing statute was somewhat of a surprise to the authorities. It was evident that Reform sentiment was growing, and that many persons who had never been classed as Reformers were weary of the long reign of tyranny. It was not the policy of the Compact, however, to yield anything to popular demands, and they held on their course with dogged pertinacity, as though animated by a fixed resolve that the

**Ante*, p. 44.

†The repealing statute is 1 Geo. IV. chapter 4. The statute repealed is 59 Geo. III., sess. 1, chapter 2.

public indignation which had been aroused by the Gourlay prosecutions should not be permitted to subside. Erelong a new opportunity for applying the thumb-screw presented itself, and it was taken advantage of to the fullest practicable extent. During the recess following the close of the first session of the Eighth Provincial Parliament, which was prorogued on the 14th of April, 1821, a vacancy occurred in the representation of the constituency of the United Counties of Lennox and Addington. The local Reformers took advantage of the opportunity thus afforded of bringing out a candidate who had rendered much service to Liberal principles in Upper Canada, and who was eminently fitted to impart strength to the Opposition in the Assembly. His name was Barnabas Bidwell, and he was known far and wide as one of the keenest intellects and as one of the best public speakers in the country. His past history had been unfortunate, and as it was soon to be made the subject of strict Parliamentary enquiry, a few leading facts in connection with it may as well be set down here.

He was a native of Massachusetts, where he was born in the old colonial days before the Revolution. He came of a Whig family which espoused the colonial cause with ardour, but he was himself too young to take any part in the great struggle which gave birth to the United States. Having completed his education at Yale College, he studied law, and at an early age rose to eminence at the Massachusetts bar. He became Attorney-General of the State, and, though he had for his rivals some of the ablest men known to American history, he was regarded by his countrymen as one whose future was in his own hands. His manners were courtly and refined, and his scholastic attainments wide and various. He soon found his way to Congress, where his brilliant eloquence caused him to be listened to with attention and respect.

Up to this time his career had been an uninterrupted success. But in achieving his political eminence he had been unfortunate enough to make for himself a good many bitter enemies. His political course seems to have been somewhat arbitrary and uncompromising, insomuch that his opponents regarded him with more rancorous feelings than are commonly entertained among public men where there are no personal grounds for enmity. Whether such personal grounds existed in the case of Barnabas

Bidwell cannot now be readily ascertained. It is however certain that he was regarded by a host of clever and unscrupulous persons with a bitterness of enmity almost amounting to ferocity. He seems to have made no attempt to conciliate his foes, but treated them with a sort of haughty contempt. In the year 1810 the weight of their anger descended upon him like an avalanche. He was then, and he for some years previously had been, Treasurer of the County of Berkshire, Massachusetts. An accusation of a very serious nature was brought against him. He was charged with having applied the public funds to his own use, and with having falsified entries in his books in order to cover up his malversations. It is difficult to get at the exact truth in the matter. Mr. Bidwell's attention to public affairs had caused him to neglect his private and professional business, which consequently had not flourished. He was far from wealthy, and it is not improbable that he was sometimes financially embarrassed. Whether he succumbed to temptation, and dipped his hands into the treasury without leave, cannot now be certainly declared. His own version of the matter was that he was entirely free from blame, but that his enemies had deliberately woven a subtle web about him from which he was unable to extricate himself, as it would have been impossible for him, under the existing state of things, to obtain justice. At all events, he seems to have felt himself to be unable to face the situation. Learning that an indictment had been laid, and that a warrant had been issued for his apprehension, he fled from his native country, and took refuge in Upper Canada.

Accompanied by his family, consisting of a son and daughter, he settled at the village of Bath, in the County of Addington, on the Bay of Quinté. He soon obtained employment as a school teacher, and encountered no difficulty in gaining a livelihood, though the humble rôle he was compelled to play comported ill with his past experience and present ambition. There is little doubt that he was an admirer of republican institutions, and that he so remained to the end of his life, though his admiration was thrown away in this country, and it was impossible for him to return to his own. He was a useful man in the little community where he resided, and his education and intelligence caused him to be looked up to by people of all classes. He did not

intrude his political views further than to proclaim himself an advocate of Liberal ideas, and upon the breaking out of the War of 1812 he took the oath of allegiance to His Majesty. His ordinary pursuits were altogether insufficient for his enthusiastic nature, and after the lapse of several years he removed to Kingston, and took up his abode there. He found an outlet for his superabundant energy through the medium of frequent contributions to the press. Among the best known of his writings are a series of letters on practical agriculture and political economy, originally contributed to a Kingston newspaper, and subsequently republished in pamphlet form under the title of "The Prompter." The series of historical and topographical sketches forming the first half of the first volume of Gourlay's "Statistical Account of Upper Canada" are also from Mr. Bidwell's pen, and they are upon the whole the most valuable portion of the entire work. He espoused Mr. Gourlay's cause with great fervour, and by his written and spoken words did much to arouse public sympathy for that unfortunate man, as well as to awaken abhorrence for the cruelty and selfishness of his persecutors. From that time forward he began to take a more conspicuous part in politics than he had been accustomed to take since his arrival in Canada. From the hustings and elsewhere he thundered against the Compact domination with an eloquence which thrilled his audiences. He soon made himself felt as a power in the land, and as one from whom the ruling faction had good reason to apprehend more serious antagonism than they had ever had to encounter.

Such was the man chosen by the Reform element in Lennox and Addington, during the summer of 1821, to represent its interests in the Provincial Assembly. The ensuing campaign was an exciting one, but at its close Barnabas Bidwell was the undoubted choice of a large majority of the electors. This was a heavy blow to the Executive party. The Reformers would now have a representative in the House who could not be cajoled or bullied. His eloquence, aggressiveness, intelligence and shrewdness could not fail to produce a decided impression on the House and on the country. Would it not be well if he could be got rid of, as Thorpe and Gourlay had been got rid of before him?

During the progress of the election campaign, some of the main facts connected with Mr. Bidwell's migration from Massachusetts to Upper

Canada had become known to his opponents. The pretext afforded by these disclosures was too good to be neglected. An emissary was despatched to Berkshire County, where there was no difficulty in ascertaining that he had been Treasurer of the municipality; that he had been indicted for misapplying public funds; that a warrant had thereupon been issued for his apprehension; and that he had then fled beyond the jurisdiction. Certified copies of the indictment and of several other important documents bearing on the matter were obtained by the agent, and by him brought over to Upper Canada. On the strength of the information and documents thus obtained a petition was filed against the election of Mr. Bidwell, upon the ground that he was an alien and a fugitive from justice, who had moreover taken an oath of allegiance to the Government of the United States. The accused notwithstanding appeared in his place in the Assembly upon the opening of the session, and when the matter of the petition came up for discussion he defended himself before the House with an eloquence and pathos which stirred every heart. He declared, in language and tones which left no doubt of his sincerity, that he was guiltless of the embezzlement with which he had been charged, and that the accusation had been solely due to the machinations of a powerful clique of enemies. He further urged that, whatever might be the facts as to the charge, he had never been tried or convicted, and that the Assembly had no right to assume his guilt in the absence of positive proof. He admitted having taken the oath of allegiance to the Government of the United States, but urged that such an oath was required of every man assuming a public office in all civilized countries; that it applied only to the period of his actual residence, and was no legitimate bar to his advancement in another country. Since his arrival in Canada he had taken an oath of allegiance to the King of Great Britain. That his loyalty was not open to suspicion was sufficiently manifest from the mere fact of his having been returned to Parliament by a constituency the inhabitants whereof were largely composed of United Empire Loyalists and their immediate descendants. Such was the course of his argument, which from beginning to end was singularly lucid and clear. But all was unavailing. He was assailed by the Government party in language such as is rarely to be met with in the

annals of Parliamentary debate in this country. Mr. Attorney-General Robinson went beyond any former effort of his life in the way of vituperation, and overleapt the bounds of the commonest decency. He proclaimed himself to be the son of a United Empire Loyalist who had fought and bled for his country, and as therefore being no fit company for runaway felons and pickpockets. His sympathy with himself was so great that the tears chased one another down his cheeks as he was speaking. All the amiability which commonly marked his intercourse with his fellowmen seemed to have utterly departed from him, and he towered above his seat in a perfect whirlwind of rage and fiery indignation. Mr. Bidwell's calm and temperate reply was in striking contrast to the levin bolts which had been hurled at him, and produced a marked effect upon his hearers. But the Compact commanded a majority in the Assembly,* which sustained a motion for his expulsion. And as it was well known that the electors of Lennox and Addington would again return him, and that he could not be permanently excluded by any ordinary means, it was determined to disqualify him by special legislation. An Act was accordingly passed intituled "An Act to render ineligible to a seat in the Commons House of Assembly of this Province certain descriptions of persons therein mentioned."† Among the persons declared ineligible were those who had held any of the principal public offices in a foreign country, which was of course an effectual disqualification for Barnabas Bidwell, who, as already mentioned, had been Attorney-General of Massachusetts. It was a veritable Act of Exclusion, aimed at a particular person, and it served its purpose by keeping the obnoxious individual perpetually out of public life.‡

* It was however a bare majority, the vote standing 17 to 16.

† See Stat. 2 Geo. IV. chapter 4, passed 17th January, 1822.

‡ Six years later Francis Collins, editor of *The Canadian Freeman*, lay in York jail for having charged Attorney-General Robinson with "native malignancy." During his incarceration he addressed several open letters to his prosecutor, in one of which may be found the following comments upon the episode referred to in the text :—

"In the next place, a most respectable portion of the colony returned the venerable Mr. Bidwell, sen., to Parliament, and upon this occasion I think you displayed more 'native malignancy' than I ever witnessed, in a political way, in the colony. A hired pimp was despatched to Boston to hunt up slanders, originating in political feuds there. Mr. Bidwell was put on his trial before a corrupt House, and when thus you saw your innocent victim within your

In consequence of Mr. Bidwell's expulsion a new election for Lennox and Addington became necessary. The writ was issued, and, to the chagrin and disgust of the supporters of the Government, a new champion of popular rights appeared in the field in the person of Marshall Spring Bidwell, the only son of the recently-expelled member. The new candidate was a young man of twenty-three years of age. He was a native of Massachusetts, and had accompanied his parents to Canada at the time of their migration in 1810. At an early age he had given proofs of the possession of splendid abilities. His father, who was exceedingly proud of the bright boy, had cultivated his faculties to the utmost, and by the time that Marshall Spring Bidwell had attained his majority he was regarded by all who knew him as having a brilliant future before him. A year before his candidature he had been called to the Provincial bar. He now presented himself before the electors of Lennox and Addington in opposition to the Tory candidate, a gentleman named Clark. The combined modesty and assurance displayed by young Bidwell throughout the contest gained for him many warm friends, while at the same time his earnestness and flowing eloquence proved that he was a true son of his father. He conducted the campaign with signal ability, and laid the foundation of a lasting reputation in the constituency. At the close of the poll the returning-officer declared Mr. Clark to have been duly elected,

reach, then it was you lifted up the flood-gates of your loyal wrath, and let your vengeance fall upon his devoted head. Then it was that the overflowings of your 'native malignancy' hurled the tears of loyalty down your pallid cheeks. Then it was that your natural flippancy gave rapid birth to the most gross, unqualified and unjustifiable abuse I ever heard heaped, not only upon a member of Parliament, but even upon the commonest member of society. 'Am I,' said you, 'the son of a U. E. Loyalist, who fought and bled for his country, to sit within these walls with disloyal runaway felons, pickpockets and murderers from the United States?'—(the loyal tears flowing.) Yes, Sir, you coaxed, you threatened, you argued, you wept, until you prevailed upon a corrupt and cringing House, as I have before remarked, to turn Mr. Bidwell out of his seat, unconstitutionally, illegally and unjustly; and the next day you were obliged to get one of your tools to bring in a Bill to cover this illegal proceeding, and prevent his re-election, thus forever depriving the country of the valuable services of a man better qualified for a legislator, in point of learning, talent and experience than yourself, or any other man, perhaps, in Upper Canada. Now, Sir, if you viewed it as a disgrace to sit in the same House with the father, although in every respect your superior, how will it suit you to bend your outrageously loyal neck to his son in the Speaker's chair, who, it is my opinion, is the most fit person in the new House to fill it, and who, I doubt not, will be elected?"

The letter from which the foregoing extract is taken bears date December 25th, and appears in the *Freeman* of that date. The prediction in the concluding sentence was verified. Mr. M. S. Bidwell was elected Speaker at the opening of the session in January, 1829.

but, as it was notorious that corrupt practices had been resorted to, a protest was entered by the friends of the Reform candidate, who himself appeared in person at the bar of the House to conduct the argument. The result of the enquiry was that the return was set aside and a new election ordered. Young Bidwell so distinguished himself by his argument before the House that the official party perceived that he was likely to be no less formidable as an opponent than his father would have been. When the new election was held he again presented himself as a candidate, but found that the returning-officer had received instructions to accept no votes for him, upon the ground that he was an alien. The Tory candidate, Mr. Ham, was accordingly returned; but another protest was filed, with a similar result. The election was once more set aside, and Lennox and Addington still remained without a Parliamentary representative. It had by this time become notorious that the whole power of the Executive was exerted to keep the Bidwells out of public life, and the conviction that such was the fact gave rise to a counter-movement on the part of the victims. The friends of Reform bestirred themselves to such purpose that during the session of 1823-'24 an Act was passed* repealing the measure of two years before, and relaxing the conditions under which persons who had resided in or taken the oath of allegiance to a foreign state should be eligible for election to the Provincial Parliament. It was provided that a residence in the Province of seven years next before election should render such persons eligible for membership in the Assembly. This clause removed all existing disqualifications from young Mr. Bidwell; but his father still remained disqualified, for it was expressly re-enacted that no person who had been a member of the Senate or House of Representatives of the United States, or who had held office in any of the executive departments of "the United States of America, or any one of the said United States," should be capable of being elected to the Assembly. Under this clause the elder Bidwell was doubly disqualified, for he had not only been Attorney-General of Massachusetts, but had also sat in Congress. It was much, however, that the son was rendered eligible. A general election took place during the summer of 1824, at which he was returned for the constituency which he then contested for the third time.

* See 4 Geo. IV., sess. 2, chapter 3, passed 19th January, 1824.

He continued to sit in Parliament for eleven successive years. He is properly regarded as one of the founders of the Reform party in Upper Canada, and by his eloquence, tact and discretion, no less than by the high respect in which his character was held, he did much to advance the progress of Reform principles.

The general election of 1824 resulted in the return of a number of prominent Reformers who now for the first time came forward to take part in public affairs. It was evident that a spirit of Reform had been awakened, and that from this time forward every important public question was likely to have two sides to it.

The most conspicuous of all the new members was Mr. John Rolph, who had been returned as one of the representatives for the County of Middlesex. As he played an important part in the event which forms the subject of this work, and as he was one of the ablest men who have ever taken par in public affairs in this country, it is desirable to give some fuller account of him than is to be found in the various books relating to the place and times in which he lived.

John Rolph was unquestionably one of the most extraordinary personalities who have ever figured in the annals of Upper Canada. He possessed talents which, under favouring circumstances, would have made him a marked man in either professional or public life in any country. Chief among his qualifications may be mentioned a comprehensive, subtle intellect, high scholastic and professional attainments, a style of eloquence which was at once ornate and logical, a noble and handsome countenance, a voice of silvery sweetness and great power of modulation, and an address at once impressive, dignified and ingratiating. His keenness of perception and his faculty for detecting the weak point in an argument were almost abnormal, while his power of eloquent and subtle exposition had no rival among the Canadian public men of those times. His famous speech—to be hereafter more particularly referred to—delivered in the Assembly, in 1836, on the subject of the Clergy Reserves, was one of the most powerful indictments ever heard within the walls of a Canadian Parliament. His arraignment of Sir Francis Bond Head before the same body early in the following year was hardly less impressive. He was of a full habit of body, even in comparative youth, and though he was rather under than

above the middle height, there was a dignity and even majesty in his presence that gave the world assurance of a strong man, while it at the same time effectually repelled unseemly familiarity. A pair of deep clear blue eyes, surmounted by rather heavy eyebrows, glanced out from beneath his smooth and expansive forehead. He had light brown hair, a well-moulded chin, a firmly-set nose, and a somewhat large and flexible mouth, capable of imparting to the countenance great variety of expression. Such, according to the universal testimony of those who knew him, and according to portraits painted from life and preserved in his family, was the John Rolph of fifty to sixty years ago.

There was unquestionably a *per contra*. Though he was a man of many friends, and was the repository of many familiar confidences, there was probably no human being—not even the wife of his bosom—who ever possessed John Rolph's entire confidence. There was about him no such thing as self-abandonment. This was not because he was devoid of natural passions or affections, or even of warm friendship, for he was a kind, if not a tender husband and father, and there were many persons whom he held in very high esteem, and for whom he cheerfully made great sacrifices. But the quality of caution seems to have been preternaturally developed within his breast. No man was ever less open to the imputation of wearing his heart upon his sleeve. He had a temperament of great equableness, and doubtless felt much more deeply than was suspected, even by those who were constantly about him. To the outer world he was ever self-possessed, calm and dignified, of pleasant and amiable manners, and not deficient in good-fellowship, but seldom or never abandoning himself to frolicsomeness or fun. His smile had a winsome sweetness about it, but it was a very rare occurrence indeed for him to indulge in anything approaching to hearty laughter. His self-control was marvellous. He was never surprised or startled, never dismayed by unexpected intelligence, never taken off his guard. Yet he possessed great dramatic talent, and in his addresses to juries and public audiences could successfully simulate the most contradictory feelings and emotions. One who judged him simply from such exhibitions as these might well have set him down for an emotional and impetuous man, apt to be led away by the fleeting passions and weaknesses of the moment.

Yet no one coming to such a conclusion would have had any conception of his real character and idiosyncrasies. He certainly never acted without motive, but his motives were sometimes dark and unfathomable to everyone but himself. Not one among his contemporaries was able to take his moral and intellectual measure with anything approaching to completeness; and throughout the entire length and breadth of Canadian biography there is no man of equal eminence respecting whose real individuality so little is known.

Mr. Rolph's peculiarities were probably inherent, for the facts of his early life, so far as known, afford no clue to the reading of the riddle. He was the second son in a family consisting of eighteen children, and was born at Grovesend, in the market town of Thornbury, Gloucestershire, England, on the 4th of March, 1793. His father, Thomas Rolph, was a physician of some local repute, who seems to have been impelled to emigrate in consequence of the impossibility of making any suitable provision in England for so numerous a progeny. The ascertained facts with reference to John Rolph's early life in England are singularly meagre. He accompanied his parents to Canada some time prior to the War of 1812, for he served as a volunteer during the early part of that conflict, and was for some months a paymaster of militia. During the progress of the war he was taken prisoner by the enemy, and was detained in custody for a short time at Batavia, in the State of New York. An exchange of prisoners having been effected, he was set at liberty. After his liberation he returned to England, where he entered one of the colleges of the University of Cambridge; and, though he seems to have left there without taking a degree, he was recognized as a young man of very remarkable and precocious intellectual powers, likely to become conspicuous in after-life. He absorbed knowledge with marvellous facility, and never forgot anything he had learned. After leaving college he repaired to London, where he was entered as a student-at-law, and was in due time called to the bar of the Inner Temple. Like Bacon, he seems to have taken all knowledge to be his province, for, not satisfied with having acquired what, in so young a man, was accounted a wide knowledge of jurisprudence, he studied for some time under Sir Astley Cooper, and was enrolled as a member of the Royal College of Surgeons. He soon afterwards returned to Canada, and

took up his abode on a lot of land in the Township of Charlotteville, about midway between the villages of Turkey Point and Vittoria, in what is now the County of Norfolk, but which then and for long afterwards formed part of the Talbot District. In Michaelmas Term of 1821 he was called to the bar of Upper Canada, and for some years thereafter he appears to have practised the two professions of law and medicine concurrently. His great acquirements and pleasant manners made him a favourite with all classes of the people, and caused him to be regarded as a genuine acquisition to the district in which he resided. He became the professional adviser and familiar friend of Colonel Thomas Talbot, founder of the Talbot Settlement, and was one of the originators of the Talbot Anniversary, established in 1817, and kept up for more than twenty years thereafter, in honour of the day of the Colonel's arrival at Port Talbot—the 21st of May, 1803. The Colonel was not, in the strict sense of the term, a politician, but he was a member of the Legislative Council, and naturally supported the official party; whereas Rolph, though a man of equable mind, and by no means constitutionally inclined towards Radicalism, had much better opportunities for mixing with the people than had Colonel Talbot, and his keen eye revealed to him many official abuses which did not commend themselves to his sense of justice. It is probable that differences of opinion on public questions led to their ultimate estrangement. At all events, Rolph espoused the side of the people, and declared himself a foe to the Family Compact policy, and from that time forward the intimacy between him and Colonel Talbot seems to have grown less and less. The Gourlay prosecutions aroused Rolph's hot indignation, which he did not hesitate to express with much freedom whithersoever he went. Being a brilliant and eloquent talker, strong in opinion and logical in argument, he made many converts to his views, the number of whom was not lessened by the course of treatment adopted towards the Bidwells. It seems to have been about this time that he took up his abode at Dundas, where he subsequently resided for many years. When the general elections af 1824 took place the Reformers of Middlesex brought out John Rolph and Captain John Matthews, both of whom were returned at the head of the poll.

Rolph made his presence felt in the Assembly from the time of taking his seat there. He was then thirty-one years of age, and of a

compact, well-built figure, inclining to portliness. His face was at once handsome and intellectual, and his presence carried with it a suggestion of undoubted power. He spoke comparatively seldom during his early Parliamentary sessions, but when he did speak it was always with effect. His diction was singularly luminous and expressive, and would have attracted attention in any public assembly in the world. There was a clear metallic ring in his voice which did full justice to the language employed, and there were few empty benches in the House when it was known that Rolph was to speak.

His colleague from Middlesex, though a staunch Reformer, was a man of very different cast. Captain Matthews was a retired officer of the royal artillery, who had seen twenty-seven years' service. At a very early period of his residence in Upper Canada he had become disgusted with Family Compact rule, and had spoken his mind on the subject with much freedom. Being a resident of the County of Middlesex, and being held in much esteem there among the adherents of Liberal principles, he was induced to offer himself along with Dr. Rolph at the general election of 1824 as one of the candidates for the county. His candidature was successful, and he became very popular in the House, though the texture of his mind was somewhat light and airy, and he was not well fitted, either by nature or by training, to deal with such grave constitutional questions as were continually forcing themselves upon public attention.

Another prominent Reformer who now took his seat in Parliament for the first time was Peter Perry, who had been returned as young Marshall Bidwell's colleague in the representation of Lennox and Addington. Although thirty-four years have elapsed since his death, Mr. Perry is still well remembered by the older generation of our politicians. During the twelve years succeeding his entry into public life he was one of the most conspicuous Reformers in the Province. Though not possessed of a liberal education, and though his demeanour and address were marred by a sort of impetuous coarseness, he was master of a rude, vigorous eloquence which under certain conditions was far more effective than the most polished oratory would have been. He was certainly the ablest stump orator of his time in this country, and there was no man in the Reform ranks who could so effectively conduct a difficult election

campaign. No man was more dreaded by his opponents, more especially by those who had to encounter him while a contest was pending. It may here be added that he continued to take an active part in politics down to a short time before his death in 1851, and that he rendered great services to the cause of Reform, but in the years following the Union of the Provinces he was overshadowed by Robert Baldwin, whose social position, spotless reputation and disinterestedness of purpose combined to place him on a pedestal beyond the reach of ordinary politicians. Peter Perry, however, while yielding a loyal support to Mr. Baldwin, continued to the end of his life to fight his political battles in his own way. The sincerity of his convictions was beyond any sort of question, and his shrewdness, experience and hard common sense caused his opinions to be regarded with respect, even by such men as Rolph, Baldwin and the Bidwells.

Mr. Perry was a native Upper Canadian, having been born at Ernestown in 1793, during the early part of Governor Simcoe's administration of affairs. He was the son of a U. E. Loyalist, and was brought up on a farm, at a time when public schools were few and far between in the rural districts. He grew to manhood without having acquired much in the way of education, but the quickness of his parts and the soundness of his judgment did much to atone for his want of regular school training. He began to take an active interest in public affairs at an early age, and before he was thirty he had acquired wide notoriety as a strongly-pronounced Reformer. Living in the same part of the country as the Bidwells, he took a warm interest in their candidature. As his political ideas coincided with theirs, and as his rough eloquence had already made him well known throughout the constituency, he espoused their side in the successive election contests, and at the general election of 1824 was himself returned to the Assembly as the colleague of the brilliant young lawyer.

In addition to John Rolph, Marshall Spring Bidwell, Captain John Matthews and Peter Perry, a number of other advocates of Reform principles were returned at the general election of 1824. For the first time in Upper Canadian annals, it was manifest not only that the Reformers had a majority in point of numbers in the Assembly, but that

they had a decided preponderance of ability. No adherent of the official party—not even the Attorney-General, John Beverley Robinson—was a match for Rolph or Bidwell, to say nothing of Perry, whose oratory was of an altogether different complexion, though scarcely less effective. Upon the meeting of the Houses the numerical strength of the respective parties was fairly tested by the vote on the Speakership. The Reformers nominated as their candidate John Willson, one of the members for Wentworth. Mr. Willson was an unpretending farmer, of strong political convictions, but of good sense and calm judgment, who had allied himself with the Reformers, and who might safely be depended upon to discharge the duties incidental to the Speakership with judicial impartiality. The vote stood twenty-one to nineteen, the majority of two being in Mr. Willson's favour. The Reformers felt that they had achieved a triumph, and were accordingly jubilant; but they soon found that the mere control of the Assembly signified very little in the absence of Executive responsibility. The Legislative Council interposed its dead weight, and vetoed one bill after another sent up by the Assembly.

The Reform preponderance in the Assembly, however, and the bringing together of the leading supporters of Liberal principles, led to the establishment of an organized body of Reformers, which from that time forward made its existence felt throughout the constituencies, and presented an obstacle to the continued rule of the Compact. Conspicuous among the Fathers of Reform, in addition to John Rolph, Peter Perry, Captain Matthews and the two Bidwells, were Doctor William Warren Baldwin, his son Robert, and William Lyon Mackenzie. None of the three last-named gentlemen was at this time in Parliament, but they were nevertheless all able to render very valuable services to Reform principles—the first two by reason of their wealth and high social position, and the third from the fact that he was the publisher of a newspaper, and that he was a man of strong opinions and superabundant energy in giving expression to them.

The elder Baldwin was a gentleman of high character and social position, resident at York. He had emigrated from Ireland to Canada towards the close of the last century, and, like Mr. Rolph, had for some time practised law and medicine concurrently. He achieved considerable success, both

pecuniarily and otherwise, and, notwithstanding his political principles, which were of a decidedly advanced character, he was respected by the entire community of the little Provincial capital. The family to which he belonged were well known in Ireland for their adherence to advanced political doctrines, and he himself remained true to family traditions. At a time when it required no slight courage to espouse the Liberal side in York, Dr. Baldwin was always to be found in the ranks of Reform. He was wealthy, as, in addition to the property which he had personally accumulated, he had succeeded, by bequest, to the bulk of the large possessions of the Honourable Peter Russell—whose method of doing good unto himself has already been glanced at—and of that gentleman's maiden sister Elizabeth. Miss Russell resided in Dr. Baldwin's family during the last few years of her life, and survived until 1822. The Russells and the Baldwins were remotely connected by ties of relationship, and as neither the Administrator nor his sister ever married, there was nothing strange in the disposition made by them of their property.

High as Dr. Baldwin stood in the Reform ranks, however, he was destined to be eclipsed by his more distinguished son. It is safe to say that no public man in Canada has ever gained so enviable a reputation as attaches to the name of Robert Baldwin. As was intimated two or three pages back, he stood upon a lofty pedestal, and was a very man *per se*. And this high position he attained, not by means of brilliant oratory, keenness of perception, or subtle comprehensiveness of judgment. No one has ever pretended to claim for him any special intellectual greatness of any kind. He was a plain man, of abilities not much above the average, who possessed strong convictions, and whose high principles, sterling honesty and disinterestedness of purpose were unimpeachable. Had he been a member of the British House of Commons during Sir Robert Walpole's régime, the proverbial dictum of that high priest of corruption would never have been uttered, for certainly no man would ever have dreamed of offering a bribe to Robert Baldwin. He has been in his grave for more than a quarter of a century; thirty-four years have elapsed since his withdrawal from public life; yet he is still referred to by adherents of both political parties in Canada as a statesman of unblemished integrity,

whose character was without spot, and in whose bosom was no guile. He more than once occupied the foremost position in the public eye. During much of his career a fierce light beat upon him, yet failed to disclose anything whereof the most august character in history would have had any cause for feeling ashamed. As I have said elsewhere: "We can still point to him with the admiration due to a man who, during a time of the grossest political corruption, took a foremost part in our public affairs, and who yet preserved his integrity untarnished. We can point to him as the man who, if not the actual author of Responsible Government in Canada, yet spent the best years of his life in contending for it, and who contributed more than any other person to make that project an accomplished fact. We can point to him as one who, though a politician by predilection and by profession, never stooped to disreputable practices, either to win votes or to maintain himself in office. Robert Baldwin was a man who was not only incapable of falsehood or meanness to gain his ends, but who was to the last degree intolerant of such practices on the part of his warmest supporters. If intellectual greatness cannot be claimed for him, moral greatness was most indisputably his. Every action of his life was marked by sincerity and good faith, alike toward friend and foe. He was not only true to others, but was from first to last true to himself. . . Robert Baldwin was neither a bigot nor a fanatic, but he was in the best and truest sense of the word a Christian. He was strict in his observance of religious duties, and brought up his children to seek those things which make for righteousness, rather than the things of this world. His piety was an ever-present influence in his life, and was practically manifested in his daily walk and conversation. As we contemplate the fifty-four years which made up the measure of his earthly span, we cannot fail to be impressed by its uniform consistency, its thorough conscientiousness, its devotion to high and noble objects. It is a grand thing to acquire a famous name, but it is a much grander thing to live a pure and noble life; and in estimating the character of Robert Baldwin it should be remembered that he was not merely a statesman and a lawyer, but was, over and above all else, a man and a Christian."*

* *Canadian Portrait Gallery*, Vol. I., pp. 17, 46.

The foregoing account, be it understood, applies to a later period. At the date of the general election in 1824 Robert Baldwin was still a young man, whose reputation, professional and political, was yet to be made. He had not even been called to the bar, and was still a student in his father's office. Notwithstanding his youth, however—he was only in his twenty-first year—he had given some thought to the political questions of the time, and had even begun to look forward to the possibility of an ultimate political career. His father, from whom he had learned many political lessons, had recently become very wealthy through the death of Miss Russell, as already mentioned. Much of his wealth consisted of landed property. Robert was the first-born child of his parents, and, as the law of primogeniture was then in force in Upper Canada,* it was to be anticipated that he would succeed to large possessions, and would be independent of any income arising from his own exertions. He bore an honoured name, and it was tolerably certain that, under such a combination of circumstances, he would sooner or later find his way to Parliament. He had already imbibed what were in those days considered as advanced Liberal views, and was in full accord with his father, who had to a large extent moulded his opinions. He was present at the meetings of the Reform members held during the first session following the elections of 1824, for the purpose of organization. It was then that a distinct Reform Party, with common objects and a specific policy, may be said to have been formed in this Province. There had been Upper Canadian Reformers from the very foundation of the Province, but no Reform Party can strictly be said to have had an existence prior to the latter part of the year 1824.

No man was more conspicuous in contributing to the founding of the Reform Party than was William Lyon Mackenzie, whose personality yet remains to be considered. Owing in some measure to the force of circumstances, but chiefly to his own energy, impulsiveness and love of notoriety, Mr. Mackenzie's name and achievements have become more widely known than have those of many abler and wiser men. He was the only

*It is to the exertions of Robert Baldwin himself that we owe the abolition of the doctrine of primogeniture as applied to real estate in Upper Canada. He it was who, while Attorney-General for the Western Province, introduced and carried through the measure of 1851.

child of humble parents, and was born at Springfield, a suburb of Dundee, in Forfarshire, Scotland, on the 12th of March, 1795. When he was four weeks old his father died, leaving him and his mother wholly unprovided for, insomuch that they were dependent upon the bounty of relatives. To adopt his own language, poverty and adversity were his nurses, and want and misery were his familiar friends. "It is among the earliest of my recollections," wrote he in 1824, "that I lay in bed one morning during the grievous famine in Britain in 1800–1, while my poor mother took from our large kist the handsome plaid of the tartan of our clan, which in her early life her own hands had spun, and went and sold it for a trifle, to obtain for us a little coarse barley meal, whereof to make our scanty breakfast; and of another time during the same famine when she left me at home crying from hunger, and for (I think) eight shillings sold a handsome and hitherto carefully preserved priest-gray coat of my father's, to get us a little food." His mother, from whom he inherited his most salient peculiarities, was a woman of strongly-marked character. She was endowed by nature with a high temper, and with a tendency to act from impulse rather than from reason. To these qualities were added great energy and strength of will. She brought up her son in the straitest of theological creeds, which left a certain permanent mental impress upon him, though during the last quarter of a century of his life he wandered far afield from the religious teachings of his childhood. He seems to have been born with a genuine love for knowledge, for, notwithstanding the inauspicious surroundings of his youth, he contrived to acquire a better education than was commonly obtainable by lads in his rank of life in Scotland in those times. The education thus acquired was almost to the end of his days supplemented by reading and study. As soon as he was old enough to enter upon employment he became an assistant in a draper's shop, after which he filled various temporary situations which led to nothing. When only nineteen he opened a small store on his own account at Alyth, a village about twenty miles from Dundee. This he conducted for about three years, by which time it had become apparent that the business could not be successfully carried on, so he abandoned it and removed to England. There he spent more than two years, during some part of which he acted as clerk to a coal company.

In the spring of 1820 he sailed for Canada, where he was destined to gain great notoriety, and to become an important factor in the moulding of public opinion.

In a new country like Canada a young man of Mackenzie's energy was soon able to make his presence felt. After being employed for a short time on the survey of the Lachine Canal, he opened a store at York, whence he removed to Dundas, and entered on a more extensive mercantile business in partnership with Mr. John Lesslie, the style of the firm being "Mackenzie & Lesslie." His mercantile venture in Dundas was fairly successful. During his residence there he married Miss Isabel Baxter, a native of Dundee, after a brief courtship of three weeks. In the spring of 1823 the firm of Mackenzie & Lesslie was dissolved, and for a few months thereafter the senior partner carried on business by himself. In the autumn of the same year he removed to Queenston, where he embarked in business by opening a general store. The store had not been many months in operation before its proprietor abandoned commercial pursuits and embraced the life of a journalist. This change seems to have been the result of some deliberation, and it must be admitted that Mr. Mackenzie possessed considerable aptitude for the new field of labour which he had chosen. His writing, though very unequal, and sometimes exceedingly verbose and amateurish in point of style, was almost always direct and easy to understand. His observation was keen, and he had taken a warm interest in politics ever since his arrival in the country. Though many of his views were what would now be considered Toryish and out of date, they were then classed by the Compact and their adherents as ultra-Radical and revolutionary. He had formed the acquaintance of Rolph, Perry, the Bidwells, and other prominent Reformers, by all of whom the sincerity of his political professions were regarded as being beyond question. The first number of his newspaper, which was christened *The Colonial Advocate*, made its appearance on the 18th of May, 1824. It consisted of thirty-two pages, and, although its owner had neither received nor sought a single subscriber, he issued an edition of twelve hundred copies. Whether he embarked in newspaper life at this particular time with a view to influencing votes during the impending general election cannot now be known

with certainty. Probably enough this may have been one of his motives, which were doubtless of a mixed nature. That he was sincere in his advocacy of Reform must in all fairness be conceded, though his itch for notoriety must always be considered in reviewing and estimating his actions. This tendency of his mind would readily lead him to select journalism as his vocation in life, more especially as he found that his opinions were regarded as having some value. As compared with his life in Britain, his career in Canada had been an undoubted success. He had acquired some property, and was in fair pecuniary circumstances. From the inner side of his counter he had been in the habit of holding forth to his customers on the political and other questions of the day, and had found that his arguments were accepted by a majority of the unlettered yeomen of Wentworth as being unanswerable. He was looked up to as a man of weight and influence in the community, and the consciousness of this was naturally gratifying to the whilome shop-boy of Dumfries. He felt incited to address larger audiences than any which had hitherto listened to him. The time seemed propitious for the establishment of a Reform newspaper. There was a general awakening in the direction of Reform, extending over the greater part of the Province. There could be no sort of doubt that public opinion was in a state of transition: that many people had begun to look forward to a time when Responsible Government would be conceded, and when the domination of the Compact would be no more. When that much-wished-for epoch should arrive, those who had been the means of bringing it about, or of hastening its advent, would stand high among the Reformers of Upper Canada. Who would be likely to stand higher than a clever and aspiring man who was at once editor and proprietor of the leading organ of Liberal opinion in the Province? Such a personage might command anything within the power of his party to grant. That he would soon be able to write his way into Parliament was a foregone conclusion; and a seat in Parliament appeared a very proud distinction in the eyes of one whose past surroundings had been so far removed from such a sphere.

That these, or something like these, were among the chief motives whereby Mr. Mackenzie was actuated in establishing *The Colonial Advocate* seems tolerably certain. Nor is there anything unusual or

censurable in such an ambition. The labourer is worthy of his hire, and no labourer is better entitled to a full recompense than is the man who, through long and weary years, struggles to win success for a depressed and righteous cause. That he was not devoid of a spirit of sincere patriotism is evident, alike from his words and his deeds. He had amassed a few hundreds of pounds, and was in no dread of poverty, being sanguine and self-confident to an uncommon degree. He ardently longed to see this fair colony rescued from the thraldom under which it groaned. In a letter* written many years afterwards, when he was an outlaw and an exile, he gives his own version of the motives which impelled him to embark upon what he calls "the stormy sea of politics." "I had long," he writes, "seen the country in the hands of a few shrewd, crafty, covetous men, under whose management one of the most lovely and desirable sections of America remained a comparative desert. The most obvious public improvements were stayed; dissension was created among classes; citizens were banished and imprisoned in defiance of all law; the people had been long forbidden, under severe pains and penalties, from meeting anywhere to petition for justice; large estates were wrested from their owners in utter contempt of even the forms of the courts; the Church of England, the adherents of which were few, monopolized as much of the lands of the colony as all the religious houses and dignitaries of the Roman Catholic Church had had the control of in Scotland at the era of the Reformation; other sects were treated with contempt and scarcely tolerated; a sordid band of land-jobbers grasped the soil as their patrimony, and with a few leading officials, who divided the public revenue among themselves, formed the Family Compact, and were the avowed enemies of common schools, of civil and religious liberty, of all legislative or other checks to their own will. Other men had opposed, and been converted by them. At nine-and-twenty I might have united with them, but chose rather to join the oppressed, nor have I ever regretted that choice, or wavered from the object of my early pursuit."

A man entertaining such views as these, more especially a man of energy and intelligence, with a newspaper at his back, could not fail to be acceptable to the little knot of politicians who formed the nucleus of

* Quoted by Mr. Lindsey, in his *Life and Times of William Lyon Mackenzie*, Vol. I., pp. 40, 41.

the Reform Party of Upper Canada. Mr. Mackenzie was cordially welcomed into the ranks, and was soon recognized as a most useful and valuable acquisition thereto. He could make no pretence to the various learning, fine presence, subtle intellect or polished eloquence of Rolph, nor even to the high but less marked qualities of the Bidwells, but the time was at hand when he was to prove that he possessed the power to move audiences, by his voice as well as by his pen. In person he would have been pronounced by a casual passer-by to be rather insignificant, being exceedingly short in stature, and not well proportioned as to his figure, which was slight, wiry, and—owing to a restless habit and a highly-strung nervous system—seldom in repose. Still, no one who contemplated his features with attention would ever have dreamed of pronouncing him commonplace. His intellectual vigour and determination were attested by his large head, massive brow, keen, light-blue eyes and firmly-set mouth. His physical energy was placed equally beyond doubt by the nervous activity above mentioned. Until he was long past the prime of his manhood he was never still for many consecutive moments during his waking hours. When labouring under any unusual excitement his frame seemed to be set on steel springs. As his temper was easily aroused, it was no uncommon thing to see him in one of these phases of excitement. But though he was thus quickly moved to anger, it could not with justice be said that his temper was bad, for, so far from being implacable, he was readily appeased, and always quick to forget and forgive. Altogether, he had an active but ill-balanced organization. His sympathies were too quick and strong for his judgment, and he frequently acted from impulse and hot blood. From his cradle to his grave he was never fit to walk alone and without guidance through any great emergency.

No two human beings could well be more unlike than were William Lyon Mackenzie and John Rolph. They were compelled to work together in a common cause for many years, but the two entities were thoroughly antagonistic, and there was never much personal liking between them. The structure of their bodies was not more dissimilar than was that of their minds. The one, slight, wiry, and ever in motion, seemed as though it might be blown hither and thither by any strong current.

The other, solid almost to portliness, was suggestive of fixity—of self-dependence, and unsusceptibility to outside influences. The one was suggestive of being in a great measure the creature of circumstances; the other of being a law unto himself—one who would be more likely to influence circumstances than to be influenced by them. Mackenzie's nature, though it could not strictly be called a shallow one, at any rate lay near the surface, and its characters were not hard to decipher, even upon a brief acquaintance. There were depths in Rolph's nature which were never fathomed by those nearest and dearest to him—possibly not even by himself. Mackenzie seems to have long regarded Rolph with a sort of distant awe—as a Sphinx, close, oracular, inscrutable. Rolph evidently estimated Mackenzie correctly, as one whose politics were founded upon deeply-rooted convictions, and not upon mere opinions, although he would probably have found it difficult to subject those opinions to a rigid analysis; as one whose energy and journalistic resources might be turned to good account in the cause of Reform, but whose discretion was not always to be relied on. This estimate, indeed, was sufficiently obvious to any one who maintained frequent or familar relations with Mackenzie, and was concurred in by most, if not all, of his friends. His earnestness and good faith, however, were manifest to all who knew him, and these were sufficient to cover much more culpable weaknesses than any which he had hitherto displayed.

Having now become acquainted with some of the Fathers of Reform, it is desirable to cast a momentary glance at the material which went to the composition of the Reform Party generally. That material was of the most heterogeneous character imaginable. It included a few U. E. Loyalists of advanced opinions, and their descendants; but the bone and sinew were made up of more recent immigrants from Great Britain and the United States. The organization of the party, such as it was, was of too recent a date at this time to admit of any absolute unanimity of opinion on all questions of public policy having been arrived at among so numerous a body. On one cardinal point, however, all were agreed: it was in the highest degree desirable that the Canadian constitution should be more closely assimilated to that of the mother-country, and that the Executive Council should be made responsible to the popular

branch of the Legislature. True, there was a small element—almost entirely made up of immigrants from across the border—who held republican theories, but no class of the community clamoured more loudly for Responsible Government than did the advocates of republicanism, very few of whom regarded their opinions as coming within the domain of practical politics in Upper Canada. On the question of the Clergy Reserves there was less uniformity of sentiment. Many sincere Reformers disapproved of the voluntary principle, and believed in a State provision for the Clergy,* though very few of them went so far in that direction as to defend the exclusive pretensions of the Church of England. On this and other important public questions, however, the diversity of opinion henceforth became less and less from year to year. In point of numbers the adherents of Reform principles constituted a majority of the inhabitants of the Province.

The *Advocate* was only six months old when its proprietor removed to York. If any good service was to be done to Reform by his means it was clear that the Provincial capital must be the seat of his operations. The removal took place in November, 1824, and in the following January the new Parliament met for the first time. Much of the interval was spent by the Reformers in preparations for organization. In all these proceedings Mr. Mackenzie took an active and prominent part. He also assumed, to a greater extent than he had previously done, the *rôle* of a public censor, and, in the columns of his paper, opened a hot fire upon the official party and their myrmidons. His writing was "personal journalism," with a vengeance, for he usually expressed himself in the first person singular, and directed his animadversions against any one who, for the time being, happened to have attracted his notice. He wrote very erratically, and from the impulse of the

* Among those who approved of such a provision no one was more outspoken than was Mr. Mackenzie himself. In the very first number of the *Advocate* he clearly laid down his platform on this question. "In no part of the constitution of the Canadas," he writes, "is the wisdom of the British Legislature more apparent than in its setting apart a portion of the country, while yet it remained a wilderness, for the support of religion." He expressed himself in favour of a law whereby the ministers of every body of professing Christians, being British subjects, should receive equal benefits from the Reserves. On this, as on many other subjects, however, the editor of the *Advocate* subsequently saw fit to alter his opinions. The instability of his opinions, indeed, was one of his most dangerous characteristics, and this alone marked him out as unfit to be trusted with the guidance of others.

moment; in one number lauding some particular personage in extravagant terms, and in subsequent numbers assailing the self-same individual in language which certainly reflected no credit upon the writer. Sometimes he even extended his attacks to the friends and relatives of those who had become obnoxious to him. In all this he merely followed the example of his opponents, from whom better things might have been expected, but he certainly lessened his influence, even among his friends and fellow-labourers, by his onslaughts upon particular individuals. There can be no manner of doubt, however, that he achieved his object of holding some of his opponents up to public ridicule, and that in at least one or two instances he was the means of affecting votes in the Assembly thereby. To what extent, if at all, his efforts in this direction contributed to the election of Mr. Willson, the Reform candidate for the Speakership in the Assembly, already referred to, is not easy to say. That his deliverances may have produced an effect upon one or two waverers, and thereby have brought about the desired result—the vote, it will be remembered, was a close one, standing twenty-one to nineteen *—is possible enough. It is at all events certain that the combined action of the Reform Party in and out of Parliament produced early and specific consequences. On a number of questions the Government found themselves confronted by a hostile majority considerably greater than they had encountered on the Speakership. But these seeming triumphs were of no immediate advantage to the Opposition. Let the majority against the Government be ever so great in the Assembly, the official policy remained the same. The Upper House rejected Bill after Bill which had been passed by the Lower, and the Executive clung to their places in undisturbed serenity.

* *Ante*, p. 110.

CHAPTER V.

A "FREE AND UNFETTERED" PRESS.

MR. MACKENZIE'S newspaper devoted much space to the advocacy of Responsible Government, which for many years constituted the main plank in the Liberal platform. He pointed out the injustice and absurdity of the existing state of things, where the people were beguiled with a mockery of representation in Parliament without having any voice in the nomination of the persons composing the Government of the day. There was no attempt on the part of the official body to distort the real facts of the case. They straightforwardly avowed their independence of public opinion, and sneered at arguments founded on the doctrine of ministerial responsibility. They proclaimed their immunity from all outdoor influence whatever, and smiled pleasantly when taunted across the floor of the Assembly with repeated violations of the constitution. Rolph, Bidwell, and other Reform members in the House were sufficiently masters of themselves to argue this and other questions on purely public grounds, and without gross violations of the laws of Parliamentary discipline. This, however, Mr. Mackenzie's impetuous temperament prevented him from doing, and as he was not in the House he felt at liberty to give full rein to his impetuosity. He made every important question a personal matter between himself and each individual supporter of the Government who contradicted him. Through the columns of his paper he poured out much bitter invective. What he said was for the most part undeniably true, but he had such an offensive way of expressing himself that the amenities of journalism were constantly violated. By this means he brought down upon his head the rancorous hatred of those whom he made the objects of attack.

The feelings entertained towards him by the members of the Government, and by the Tory party generally, were largely personal and independent of politics. The conflict between them may be said to have begun before the removal from Queenston to York, and indeed almost before the ink was dry upon the first number of the *Advocate*. In that number Sir Peregrine Maitland, the Lieutenant-Governor, was accused of indolence, and of being the cause why Upper Canada was less progressive than her enterprising republican neighbour. He was referred to as one who, after spending his earlier days in the din of war and the turmoil of camps, had gained enough renown in Europe to enable him to enjoy himself, like the country he governed, in inactivity; whose migrations were, by water, from York to Queenston and from Queenston to York, like the Vicar of Wakefield, from the brown bed to the blue, and from the blue bed to the brown. Such comparisons as these could not be expected to find much favour with Sir Peregrine, more especially as they notoriously contained more than a *soupçon* of truth. The faction naturally sympathized with the Lieutenant-Governor, and only waited a suitable opportunity to give adequate expression to their abhorrence of Mackenzie and his doctrines. As for Sir Peregrine, he was ready enough to coöperate with his supporters in any proceeding for the suppression of this free-spoken and most objectionable little Radical, who dared to wag his plebeian tongue against the son-in-law of a Duke. An occasion for the first overt act of hostility was afforded by certain rites connected with the erection of the monument on Queenston Heights to the memory of Major-General Sir Isaac Brock. The construction of the monument having been determined upon, and considerable sums of money having been granted by Parliament for the purpose, commissioners were appointed to superintend the work, which was duly proceeded with. The second funeral of the dead hero, and the removal of his remains from Fort George, had been fixed for the 13th of October (1824), being the twelfth anniversary of the battle; but in the interim some of the local magnates of the Niagara District resolved that the foundation-stone should be laid with masonic honours. The 1st of June was appointed for this ceremonial, and on that date a considerable number of persons assembled on the Heights to witness it. Mr. Mac-

kenzie, who, it will be remembered, then resided at Queenston, seems to have taken an active part in the proceedings, and this with the full consent and approval of the committee of management. A glass vessel, hermetically sealed, and enclosing a number of coins and a copy of *The Upper Canada Gazette*, together with the recently-issued first number of *The Colonial Advocate*, was produced for the purpose of being placed within the hollow of the foundation-stone. The vessel and its contents, enveloped in an otter's skin, were placed by Mr. Mackenzie in the cavity, the spectators looking on in quiet approval. The stone was then touched with the trowel, the deposit was covered up, and the rite was complete. An account of the proceedings found its way into the newspapers, and Sir Peregrine Maitland learned, to his intense disgust, of the part which Mackenzie had been permitted to take in the ceremony. He sent for Colonel Thomas Clark, one of the commissioners appointed by Parliament to superintend the construction of the column, and, in a voice of undisguised passion, gave orders to that gentleman that the glass vessel should forthwith be disinterred, and the copy of the *Advocate* removed therefrom. The mandate was of course obeyed. As the column had by this time reached a considerable height, the excavation was no slight task. Mr. Mackenzie himself, who personally attended at what he called the "premature resurrection," claimed and obtained possession of the number of the paper which had caused so much unnecessary labour and ill-temper.

From this time forward there was almost incessant warfare between Mr. Mackenzie and the official party: warfare sometimes suppressed, sometimes altogether concealed for a brief season, but always ready to break out upon the slightest pretext—sometimes, indeed, without any apparent pretext at all.

Soon after the *Advocate's* removal to York, and not long before the opening of the Legislature, the Honourable D'Arcy Boulton, one of the puisne judges, laid himself open to attack by conduct of the most reprehensible kind. In a case tried before him, in which his son, the Solicitor-General, appeared on behalf of the Crown, the Judge displayed such gross partiality that one cannot read the report of the proceedings, even as chronicled by one of the organs of the Government,

without mingled feelings of wonder and disgust. At the present day such conduct on the part of an occupant of the judicial bench would bring down upon his head the animadversions of the press of the whole country. Sixty years ago it passed without editorial remark from any of the journals of the time, with the single exception of the *Advocate*, which certainly used some very plain words in characterizing the Judge's behaviour. It appealed to the Legislature to address the Governor on the subject, with a request to dismiss from office the whole of the Boulton race, root and branch. "If a Government emanating from England," wrote Mr. Mackenzie, "can cherish such a corrupt, such a Star Chamber crew, then the days of the infamous Scroggs and Jeffries are returned upon us; and we may lament for ourselves, for our wives and for our children, that the British Constitution is, in Canada, a phantom to delude to destruction, instead of being the day-star of our dearest liberties."

Such language as this, which was a mild specimen of the writer's trenchant style, was not, upon the whole, too strong for the occasion. In other instances he was roused to greater fury on less provocation, and used phrases unbefitting the columns of any paper which aspires to be a public instructor. But he was not alone in his scurrility. Some of the persons attacked in the *Advocate* retorted upon the editor through the official press in language far less defensible than his own. He was denounced as an upstart and a demagogue, whose low origin placed him far beneath the notice of gentlemen. This language, be it understood, was used by at least one wealthy and influential personage whose own origin was such that Mr. Mackenzie's might have been pronounced aristocratic by comparison. To all such vapourings Mr. Mackenzie responded in the *Advocate* in kind. He had a large vocabulary of Billingsgate at his command, and as his temper became thoroughly aroused he proved that he could fully hold his own in this sort of wordy warfare. He followed the example of his antagonists, invaded the sanctities of private life, and descended to outrageous personalities. The persons thus placed in the journalistic pillory were merely paid back in their own coin, but they had never been accustomed to yield to others the privileges they claimed for themselves, and could not understand how "this fellow" dared presume to retort

the foulness hurled at him. His paper meanwhile enjoyed a fair circulation, and his enemies periodically saw themselves held up before the people of the Province in a light well calculated to bring down public execration upon them. They winced, and hated their aggressor with a hatred which knew no bounds.

Before the close of the first session of the Ninth Parliament, in 1825, the struggle between the two political parties had assumed a distinct form. The Opposition contended for a responsible Executive; the Government repudiated the contention with sarcastic contempt. There were various other grounds of dispute, but this great question overshadowed and practically included all. It cannot truly be said that there was much perceptible progress in reform during the session; indeed material progress was impossible so long as the Government controlled the Legislative Council, and while the Executive Councillors held on to office in spite of the hostile votes of the Assembly. The way towards reform was however paved by the debates. Never before had the Government of Upper Canada been subjected to the incessant criticism of a watchful and vigorous phalanx of censors within the walls of Parliament. They were not wise enough to read the signs of the times, and would yield nothing to the demands of their opponents. They still believed in the efficacy of repression, and the next few years were marked by a series of high-handed persecutions which did more to speed the progress of reform than all the eloquence of Rolph and Bidwell could have effected in half a century.

As for Mackenzie, he would doubtless have been dealt with as Gourlay had been, could such a course have been adopted towards him with safety. Isaac Swayzes in abundance might no doubt have been found to swear that the obnoxious personage had not been a resident of the Province for the preceding six months. Doubtless, also, phrases had been used in the *Advocate* which, isolated from the context, might have been tortured into something like sedition. But the party in power were not so dull as to be unable to perceive that *that* experiment must not be repeated. The Liberal schoolmaster had been actively at work within the last few years, and any attempt to re-enact that glaring iniquity would, to say the least, be attended with serious risk to the actors.

The most feasible method of disposing of the noisy little firebrand presented itself in the shape of successive indictments for libel, to which his aggressive and unguarded mode of writing would be certain to expose him. It is of course impossible to obtain direct evidence of an express conspiracy on the part of the Government to destroy him by such means. A conspiracy of that nature would not be likely to take the shape of a written contract which might be produced against the contracting parties in the future. Nor would the parties to such a conspiracy be likely to leave any written traces of it behind them. Still, anyone who has the opportunity and inclination to go minutely into the question will be irresistibly driven to the conclusion that there was some sort of understanding among the chiefs of the official party that the publication of the *Advocate* was to be stopped, and that its editor was to be either driven out of the country or reduced to silence.

In the meantime Mr. Mackenzie himself had serious difficulties to contend with. The *Advocate*, notwithstanding its considerable circulation, did not yield any appreciable income. Subscribers were backward in their payments, and the cost of making collections reduced the profit to little or nothing. The postage to country subscribers had to be paid in advance by the publisher, which was in itself a considerable drain upon his resources. The issue of the paper was moreover necessarily attended by a good deal of expense. It did not appear regularly, and the intervals between successive numbers were sometimes of considerable duration. This irregularity was a serious drawback to its prosperity, and a source of much dissatisfaction to its patrons. Such a combination of discouragements could have but one result. By the beginning of June, 1826, Mr. Mackenzie had been reduced to serious pecuniary embarrassment, and had temporarily withdrawn himself from the jurisdiction, pending an arrangement with his creditors. It is in the highest degree improbable that another number of the paper would ever have been issued. It was moribund, if not already dead. But when matters had arrived at this pass, the violence of Mackenzie's enemies led them to commit an act of lawless ruffianism which gave the *Advocate* a new lease of life. The act moreover aroused much popular indignation against the perpetrators, and a proportionate degree of sympathy for their victim, to

whom it gave additional importance, while it at the same time materially improved his financial condition.

During the spring of the year 1826 the *Advocate's* criticisms upon certain members of the oligarchical faction were marked by exceptional acerbity. The persons attacked, however, sought in vain throughout the closely-packed columns for any material upon which a criminal prosecution might be founded; for Mr. Mackenzie, whether by prudence or good fortune, contrived for some weeks to say very acrid things without rendering himself liable to an indictment. Among the persons who were compelled to pass through the fire of his criticism was the Honourable James Buchanan Macaulay, a gentleman who in after years attained the honour of knighthood, and became Chief Justice of the Court of Common Pleas for Upper Canada. At the period under consideration he was a member of the Executive Council, and occupied a high position at the local bar. The language employed by the *Advocate* with respect to him was comparatively mild, and did not even mention him by name. Moreover, the editor's remarks appear to have been entirely in accordance with facts. At any rate they were altogether insufficient to account for the state of ferocity into which Mr. Macaulay allowed himself to be lashed. He prepared and published a pamphlet, in which he gave vent to such scurrility as it seems incredible that any man of education, or even of decent social training, could ever have descended to write. Truly, no man is ever so effectually written down as when he himself holds the pen. Those readers who wish to be better acquainted with the depths to which an angry man can lower himself, and who have not access to Mr. Macaulay's pamphlet, can obtain some inkling of the truth by reference to Mr. Lindsey's "Life and Times of William Lyon Mackenzie."* As Mr. Lindsey very justly remarks:—"The cause of the quarrel was utterly contemptible, and Mr. Macaulay showed to great disadvantage in it." It seems probable enough that one main object of the publication of the pamphlet was to goad Mr. Mackenzie into a retort which would render him amenable to the law of libel. In one sense this plan—if such there were—succeeded. The *Advocate* came out with a long reply which contained an abundance of scandalous matter, a great part of which, as

* Vol. I., p. 89, et seq.

the writer must have been well aware, had no shadow of foundation in truth. The matter related not only to persons occupying public situations, but to individuals altogether unconnected with public life, including respectable married women and persons who had long been dead. But most of the statements and insinuations, even those which were unsupported by a tittle of evidence—nay, even those which were notoriously groundless—related to and were interwoven with circumstances which, as the persons involved well knew, would not bear discussion. It would never do to permit such matters to become the subject of judicial investigation. Anything in the shape of an enquiry would inevitably lead to disclosures seriously affecting the honour of more than one member of the Compact. An indictment, therefore, was out of the question.

It has often been asserted that the oligarchy are to be held accountable for the display of ruffianly violence which followed Mackenzie's retort to Macaulay's pamphlet. In one sense this is true, for it was in consequence of their long abuse of the supremacy which they enjoyed that feelings of hatred and enmity were begotten between one stratum of society and another; and it was this hatred which gave rise to violent measures. But if it is meant to be implied that the oligarchy, as a body, conceived the design, or that it was carried out under their auspices, the implication is too absurd to stand in need of serious rebuttal. To carry the argument no farther, the body was too numerous to admit of any general secret coöperation between them for such a purpose. As simple matter of fact, all knowledge of the contemplated violence was confined to the breasts of those who took part in it. No one familiar with the circumstances, however, can doubt that it met with the fullest approval of the ruling faction after it had been effected, and that, so far as such a thing was possible, the wrong-doers were protected by them from the consequences of the outrage. To this charge they must perforce plead guilty; but there are degrees in guilt, and the endorsation, or even the approval of an act after it has been committed, is a different thing from the original conception and carrying out of it. The respective weight of culpability, in the case under consideration, is a matter which the reader may very well be left to estimate according to his own judgment.

And now for the outrage itself.

The office of the *Advocate* was situated on the north-west corner of Frederick and Front* streets, in a building which had been the birth-place of Robert Baldwin, and in which the Cawthras subsequently carried on a large and very successful mercantile business.† Readers acquainted with the neighbourhood will not need to be informed that this site is in close proximity to the bay. Mr. Mackenzie, with his aged mother—who had long before followed him to Canada—and the rest of his family, resided in the building, which was therefore his home, as well as his place of business. At about half-past six o'clock in the afternoon of
1826. Thursday, the 8th of June, 1826, in broad daylight, and while the proprietor was absent in the United States,‡ a raid was made upon the printing establishment, which, in the course of a few minutes, was reduced to a state of confusion and chaos. The door was broken open, the press partly demolished, the imposing-stone overturned, and a quantity of type battered and thrown into the adjacent bay. The contents of some of the cases were "pied" and scattered around the floor. Frames, chases, galleys, composing-sticks and office furniture were thrown together in one confused heap. In a word, the entire office was turned topsy-turvy. Mr. Mackenzie's mother, who was then in her seventy-eighth year, stood and watched the proceedings in a state of great fear and agitation from a corner of the office.§

The most remarkable feature about the whole of this extraordinary transaction was that there appeared to be no attempt at concealment. It was carried out as though it had been the most legitimate and ordinary business enterprise, to which no one could reasonably offer any sort of

*This portion of Front Street was then and for many years afterward known as Palace Street. It had been so named, in the early years of York's history, from the circumstance that it led down to the Parliament Buildings in the east end of the town, and because it was believed that the official residence or "palace" of the Lieutenant-Governor would be built there.

†This historic landmark was burned down during the winter of 1854-'5.

‡He had, as previously mentioned in the text, withdrawn from the Province with a view to a settlement with his creditors. He was at Lewiston, in the State of New York. In the beginning of the second part of his pamphlet, published at York in 1826, giving an account of the affair, he represents himself as having been at Queenston when he received news of the raid.

§The statement to be found in various books—among others in Wells's *Canadiana*, p. 164, and Roger's *Rise of Canada from Barbarism to Civilization*, Vol. I., p. 405—that Mr. Mackenzie's mother was grossly maltreated by the rioters is wholly without foundation. The affair was disgraceful enough, in all conscience, and needs no fictitious embellishments.

objection. The raiders did not think it necessary to wait for darkness, nor did they resort to any disguises. If they did not court publicity, they at least took no care to avoid it. They chose a time of day when the journeymen and apprentices connected with the establishment were almost certain to be absent, and when there would be no one to oppose their entrance; though, according to the printed admission of the prime mover and instigator of the affair, they were prepared, if necessary, to oppose force to force in order to effect their purpose. As there was nobody in the office, any such display of force was happily uncalled for. Having made their way inside, the work of destruction was proceeded with coolly and calmly, as though there was no necessity for extraordinary haste. When they had fully worked their will, they departed as quietly as they had arrived.

The actual perpetrators of this unique act of ruffianism were nine in number. They were none of them ruffians by profession, and were not commonly rated as blackguards. They could not even plead the poor excuse that they were under the influence of strong drink. Most of them were young men, and nearly all of them were closely identified, either by interest or by close relationship, with prominent members of the oligarchy. They were, in short, with few exceptions, the flower of the aristocracy of the little capital. Chief among them was Samuel Peters Jarvis, barrister, the slayer of poor young John Ridout, mentioned on a former page.* He, at least, could not plead in extenuation of his share in the transaction that he had been carried away by the uncontrollable effervescence of youth, for he was at this time not far short of thirty-four years of age†. His acquittal on a more serious charge nearly nine years before might well have led him to believe that he could with impunity set the law at defiance. His identification with the ruling faction is easily traced, for he was a son of Mr. William

**Ante*, p. 13.

†According to a contemporary pamphlet giving an account of the duel, which took place in 1817, he was then twenty-five years of age. He would therefore be at least in his thirty-fourth year at the time of the press riot in 1826. By reference to the Barristers' Roll I find that he was called to the bar in Trinity Term, 55 Geo. III., 1815, at which time he must have been at least twenty-one years old, so that the statement in the text cannot be far from the fact. It is from him that Jarvis Street, Toronto, derives its name.

Jarvis, who was for many years Secretary of the Province; and he was moreover son-in-law to ex-Chief Justice Powell.* He himself held a situation under Government at this time—being Clerk of the Crown in Chancery—and stood high in the favour of Sir Peregrine Maitland, towards whom he sometimes acted in the capacity of private secretary. He was the chief offender, for it was by him that the outrage was planned, and he was the directing spirit throughout, as well as the most noisy and impudent apologist for it afterwards. Another active participant in the raid was Captain John Lyons, a confidential clerk in the Lieutenant-Governor's office. A third was Henry Sherwood, student at law in the office of Attorney-General Robinson, and Clerk of Assize. He was a son of the Honourable Levius Peters Sherwood, one of the puisne judges, and was also connected with other leading members of the ruling faction. It is due to him to say that he eventually outgrew the follies of his youth, and became an able lawyer, a prominent politician, and a useful member of society. He alone, of all the participators in this shameful business, attained to anything like honourable distinction. A fourth member of the gang of kid-gloved housebreakers was Charles Heward, a son of Colonel Stephen Heward, who, in addition to being an active spirit among the Compact, was a magistrate, Clerk of the Peace in and for the Home District, and Auditor-General of Land Patents. The others were Charles Richardson, a student in the office of Attorney-General Robinson; James King, a student in Solicitor-General Boulton's office; Peter M'Dougall, a well-known shopkeeper in York in those times; and two sons of the Honourable James Baby, Inspector-General, and member of the Executive Council. These were all the active participants in the outrage. While it was in progress a number of other persons appeared upon the scene, but did not take any part therein otherwise than as spectators.

It is of course not to be supposed that this incursion was attributable, either directly or indirectly, to the Government as a body, or that it had formed a subject of deliberation at the Council Board. The charge that it was attributable to the entire oligarchy has already been disposed

* The Hon. W. D. Powell ceased to be Chief Justice during the previous year (1825), when he was succeeded by Mr. (afterwards Sir William) Campbell.

of.* But it is at least fairly to be inferred that, after the thing had been done, the Government considered themselves as being under obligations to the misguided persons concerned in it. Several of the latter received appointments to positions of public trust and emolument, such as are usually conferred by Governments upon deserving supporters. Jarvis was successively appointed to various posts, the most important of which was that of Indian Commissioner, in which capacity he became a defaulter to the Government, and was involved in serious pecuniary and other difficulties. The avenging ghost of John Ridout pursued him, and his subsequent career was not one to be contemplated with admiration. Richardson, again, was appointed Clerk of the Peace for the Niagara District. Sir Peregrine Maitland could not pretend to overlook the dereliction of his confidential clerk, Captain Lyons, who was accordingly dismissed from that position. But this was not the end of the story. Many readers are doubtless familiar with Halifax's remark when Lawrence Hyde, Earl of Rochester, was removed from the post of First Lord of the Treasury and installed in that of Lord President. "I have seen people kicked downstairs," remarked the great Trimmer, "but my Lord Rochester is the first person that I ever saw kicked up-stairs."† In like manner the Lieutenant-Governor's clerk was soon afterwards kicked up-stairs, by being appointed Registrar of the Niagara District.

It really seemed as though this wanton and most reprehensible invasion of private rights was regarded by those in authority as a high and meritorious action. It was certainly so regarded by "the best society" of York at the time. The young men, who ought to have been made to suffer social ostracism, were petted and caressed as heroes who had done some grand service to the State; and, as will presently be seen, they were not even permitted to suffer any considerable pecuniary loss by reason of their breach of the law. Finding that their conduct led to their being made the subjects of a sort of hero-worship, it is not surprising that they soon came to pique themselves upon what they had done, and, so far from feeling any consciousness of shame or regret, to openly court publicity for their proceedings. Jarvis was especially culpable in this respect, and was not ashamed to write letters to the papers on the subject, in one of which he

**Ante*, p. 129. †Macaulay's *History of England*, Vol. I., Chapter 2.

avowed himself as the author and originator of the outrage. He admitted having led on his band of semi-official desperadoes, determined to "persevere, if resistance had been made." As to the morality or immorality of the act, he professed himself "easy on that head." Such language as this, coming, as it did, from one who had shed the blood of a fellow-creature upon very slight provocation; who had been tried for murder, and acquitted because the crime was sanctioned by the usages of society; and who, moreover, in the estimation of many people, richly deserved the hangman's noose—such language, under the circumstances, was not merely injudicious and unfeeling, but positively revolting. The only conceivable excuse that can be made for it arises from the fact that Jarvis was at the time irritated by a succession of attacks in the newspapers, in which his conduct, bad as it had been, was held up in even a more odious light than it deserved. The excuse may be taken for what it is worth. It is at least certain that had the transgressor been imbued with feelings of ordinary delicacy he would not have permitted himself to be goaded into using such expressions as are to be found in his "Statement of Facts," published at York nearly two years after the type riot.* His callousness stirred the hot blood of Francis Collins, of *The Canadian Freeman*, to speak his mind editorially on the subject:—"We view it," he wrote, "as the greatest misfortune that could happen to any man in this life to imbrue his hands in the blood of a fellow-man. But as this barbarous practice has, by long usage, become familiar to the mind of civilized society, we think it is a misfortune that might occur to an otherwise virtuous and well-disposed man, and therefore ought not (unless under aggravated circumstances) to be a reproach either to himself or to his children; provided that, during the remainder of his life he will show that caution which becomes his delicate situation, and prove by his subsequent benevolence that he regrets his misfortune. But if, after once having stained his hands with human blood, he will act the desperado, and become a leader in such outrages as may end in a repetition of his former act—then, we say, he

* *Statement of Facts relating to the Trespass on the Printing Press in the Possession of Mr. William Lyon Mackenzie, in June, 1826. Addressed to the Public generally, and particularly to the Subscribers and Supporters of the Colonial Advocate.* York, 1828.

is worthy of reproach, and ought to be viewed as the common enemy of mankind."*

News of the aggression soon found its way to Mr. Mackenzie at Lewiston.† He at once returned to York, and lost no time in instituting proceedings against eight of the aggressors who had constituted themselves a vigilance committee at his expense. He brought a civil action for damages, and erelong these incipient "Regulators of Upper Canada" began to realize that they had acted with some precipitation and foolhardiness. It seemed probable that they would be mulcted in heavy damages; and even these would be no bar to a criminal prosecution. The aforementioned James Buchanan Macaulay was appointed to conduct their defence. The plaintiff's attorney was James Edward Small, a rising young lawyer who afterwards made some figure in political life, and who belonged to a well-known family in York. Overtures in the direction of a compromise were made on behalf of the raiders, who offered first two hundred pounds and afterwards three hundred by way of full compensation. The smaller amount would have been an abundant recompense for the actual loss,‡ but Mackenzie felt that public sympathy was with him, and he was desirous that the facts should go to a jury. The offer of the defendants was rejected, and the case came on for trial before Chief Justice Campbell and a special jury in the following October. Associated with the Chief Justice were the Honourable William Allan and Mr. Alexander McDonnell, as Justices of the Peace. The plaintiff's counsel were Marshall Spring Bidwell, J. E. Small, and Alexander Stewart, of Niagara. The defendants were represented by J. B. Macaulay and Christopher Alexander Hagerman. These names afford sufficient evidence that full justice was done to the case on both sides. Hagerman was a counsel of remarkable ability, and he fought very hard. His argument was a masterpiece of clever, specious reasoning, well calculated to produce an effect upon uneducated or half-educated jurymen. He took an enlightened stand,

*See the *Freeman* for Thursday, Feb. 21st, 1828.

†See note to p. 130 *ante*.

‡Mr. Mackenzie, when taken before the Grand Jury to give evidence in support of a criminal prosecution of the type rioters, admitted that his actual, as distinguished from his incidental loss by the riot, did not exceed £12 10*s*. sterling.

admitting the advantage to a community of a free and unfettered press. He then proceeded to argue away all the consequences of the admission, alleging that the career of the *Advocate* had been one of license, and not of mere freedom. But the evidence of the outrage was clear and unassailable, and the defence did not venture to call any witnesses. It was proved on behalf of the plaintiff that three members of the ruling faction, two of whom were magistrates, had been in close proximity to the scene of the raid at the time when it took place; and there appears to be very little doubt that all three must have been eye-witnesses of the outrage. One of these was the Honourable William Allan, who, at the very moment when this evidence was given, sat on the bench to the right of the Chief Justice as an associate judge on the trial. Colonel Heward, whose son Charles was one of the delinquents, was the other magistrate compromised by the evidence. The third person alleged to have witnessed the transaction was Mr. Macaulay, leading counsel for the defence. The utter incongruity and unseemliness of the whole affair from first to last seems incomprehensible at the present day. All sense of the fitness of things seems to have been wanting.

The trespass had been flagrant and bold, and the only question which the jury had to consider was the amount of damages. There were conflicting elements among the jurors, who were long in coming to a decision. After much deliberation they returned a verdict of £625, which sum, together with costs of suit, was soon afterwards paid over to the plaintiff's attorney.* But the rioters themselves were not suffered to sustain this loss. Prominent adherents of the official party did not hesitate to say that

* It was the policy of the official party to suppress, as far as was practicable, all reference in the public newspapers to the misdoings of themselves and their adherents. This was but natural. No one likes to see his transgressions preserved to future ages in all the pitiless coldness of type, which may rise up against his descendants long after he himself is forgotten. The following is a complete transcript of the contemporary report of the trial of these rioters, as published in *The U. E. Loyalist*, a sheet issued as a sort of supplement or rider to the official *Gazette*. It appears in the *Loyalist* for October 21st, 1826:

"*Court of King's Bench.*—In the suit of M'Kenzie *vs* Jarvis, M'Dougall, and others, for Trespass, the Jury, after a consultation of twenty-four hours, returned into Court—Verdict for the Plaintiff £625."

This is absolutely the only information obtainable from the contemporary number of the official organ on a subject which was *par excellence* the topic of the time. It may be added that the organ contained no reference whatever to the type riot until many weeks after its occurrence.

by the attack upon Mr. Mackenzie's press and type, and by the consequent stoppage of publication of his paper,* the perpetrators of the outrage had rendered an essential service to society, by abating an intolerable nuisance. Under such circumstances it was only just that society should bear harmless those who had thrown themselves into the breach and vindicated her rights. It was resolved that a subscription should be set on foot with this laudable object.

Among the few high Tories resident at York in those days upon whose characters it is possible for one of modern ideas to look with sympathy, and even with a considerable degree of admiration, was Colonel James Fitz Gibbon. The Colonel was a gallant veteran who had fought the battles of his country on two continents, at Copenhagen and the Helder, at Fort Erie and the Beaver Dams. His military career was not yet quite at an end, for he was destined to play an important part in the putting-down of the Upper Canadian Rebellion; a circumstance which furnishes a sufficient justification for a somewhat more extended reference to him in this place than his mere connection with the press riot would have rendered necessary. He was an Irishman of humble origin, who had enlisted as a private soldier at the age of seventeen, and who, by sheer force of energy, bravery and aptitude for his profession, had fought his way to military rank and honour. After seeing much service on the continent, and passing through as many adventures as a knight-errant of old, he was transferred to British North America. His gallant services in this country are imperfectly recorded in various accounts of the War of 1812, and in Tupper's "Life of Brock." Every Canadian is, or ought to be, familiar with the circumstances attending the capture by him of a force of 450 infantry, fifty cavalry, and two guns, he himself being at the time in command of only forty-eight men. After the close of the war he was placed on half pay, and took up his abode at York. He attached himself to the Provincial militia, whence he derived his rank of Colonel. He likewise obtained a post in the Adjutant-General's office, and subsequently became Deputy Adjutant-General, which position he held at the period at which the narrative has arrived. He was also in the Commis-

* Apparently they were not then aware that the publication had actually ceased before the riot took place.

sion of the Peace, and frequently sat in Quarter Sessions. His share in suppressing the revolt in 1837 will be narrated in its proper place. For the rest it may be added that he was always impecunious, for, apart from the fact that he was no financier, and never knew how to take care of money when he had any, the expenses of his outfit when promoted to the rank of Adjutant, in 1806, formed the nucleus of a debt which hampered him from youth to old age. His indigence often subjected him to straits which must have been hard to bear; but he was of a sanguine, joyous disposition, and poverty, though it might temporarily overcloud his happiness, had no power to break his indomitable spirit. During his long residence in Canada he was a persistent seeker after office, because he was almost always in pecuniary straits; but he fully earned all the emoluments he ever received from the Government, and if his income had been five times as large as it ever was he would probably have been neither more comfortable nor less impecunious. It seemed as though no experience could lead him to take thought for the morrow. His chief characteristics were such as are not uncommon among his fellow-countrymen. He was generous and open-hearted to a fault, ever ready to bestow his last shilling upon anybody who needed it, or who even made a plausible pretence of needing it. He was rash, impetuous and indiscreet, but the ranks of the British army held no braver or more loyal heart than his. In his simple and gentle soul there was no room for envy or guile. He seems, indeed, to have been in many respects a sort of Irish reflection of Colonel Newcome; and the parallel even extended to the outward circumstances attending the close of their respective lives. Colonel Newcome, when all his worldly possessions had gone from him, retired to Grey Friars —the Charterhouse—a retreat for "poor and decayed brethren," when the world seemed to afford no other asylum. There he passed the remainder of his days, and there he said "Adsum" when his name was called for the last time in this world. In like manner Colonel Fitz Gibbon, when all other resources failed him, was able, through the kindness of Lord Seaton, to obtain a place in an asylum of somewhat similar character. At Royal Windsor there is an institution which provides a retreat from the cares and storms of life for a limited number of depleted old military officers. The members are styled Military Knights of Windsor, and the

abodes provided for them are situated "within the precincts." Hither, in 1850, when he had entered upon his seventieth year, the battered old hero of many fights retired to pass in quiet the evening of an active life. He survived for more than ten years, during which period he succeeded in obtaining for himself and his brother knights certain important privileges of which they had theretofore been deprived.

Though he was not, in the proper sense of the word, a politician, both his interests and his superabundant loyalty impelled him to the side of those in power. No one in the Province had less respect for radicals of the Mackenzie stamp. It was sufficient for him to reflect that the official party reflected the might and majesty of the Crown of Great Britain. His whole nature, fostered by his military training, revolted at the idea of opposition to those in authority. He was moreover dependent upon the Government for his place in the Adjutant-General's office, and would naturally espouse the side of his patrons. The Compact had no more faithful adherent, and by no one were "low radicals" held in more profound abhorrence. He was roused to a high pitch of fervour by the trial of the press rioters, who, in his opinion, had acted in the most patriotic and praiseworthy spirit. When the verdict had been rendered, and when it had become manifest that the defendants must pay the penalty of their acts, the Colonel regarded them as martyrs. He promptly volunteered to canvass the town for subscriptions to a fund for discharging the liability, and thus saving "the boys," as he called them, from loss. He was as good as his word, and the requisite sum was soon forthcoming. Who the contributors to this fund were has never been fully revealed, and the secret is likely to be well kept, for the list was burned by Colonel Fitz Gibbon immediately after it had served its purpose, and there is probably no man now living who can throw any light upon the subject. Mr. Lindsey observes* that "it is believed the officials of the day were not backward in assisting to indemnify the defendants in the type-riot trial, for the adverse verdict of an impartial jury"—a belief which, under the circumstances, is certainly not an extravagant one. It was commonly rumoured that several heads of departments had contributed twenty pounds each to the fund, and Francis Collins gave

**Life of Mackenzie*, Vol. I., p. 99.

currency to the rumour through the columns of his paper. The controversy to which this gave rise was the indirect means of furnishing almost the only evidence now obtainable as to the signatures to the subscription list. Collins asserted that Sir Peregrine Maitland's own name was understood to be at the head of the list, opposite to a large contribution. Colonel Fitz Gibbon was so indiscreet as to write a reply, in which he distinctly declared that the latter's assertion was wholly untrue, *so far as the Lieutenant-Governor was concerned.* From this letter, which was duly given to the public in the *Freeman*, it was not unfairly to be inferred that the assertion, so far as it related to the heads of departments, could not be truthfully denied. That some, at least, of the members of the official body contributed to the fund was matter of notoriety in York at the time, and, so far as I am aware, has never been denied. The Honourable James Baby, indeed, who was then or shortly afterwards the senior member of the Executive Council, and who, as before mentioned, was the father of two of the young men concerned in the raid, contributed his share with great reluctance. He was at this time advanced in life—he was in his sixty-fifth year—and he had ceased to carry much weight in the Great Council of the Province, having been to a large extent superseded by younger and more energetic men. His opinions were no longer deferred to as they had once been, and on one or two occasions he had, as he conceived, been treated with inadequate respect by some of his junior colleagues. He felt his position keenly, and there is reason for believing that he would have resigned his office of Inspector-General and his seat at the Council Board, had it not been that there were many demands upon his purse, and that he was largely dependent upon his official salary for the support of his family. On a subsequent page a notable instance will be given of the degradation to which his poverty compelled him to submit at the hands of the Lieutenant-Governor. Under the circumstances, however, he could not refuse to contribute to Colonel Fitz Gibbon's list; and it is recorded that when one of his sons called upon him for the amount which he had subscribed, he handed over the sum with justifiable petulance, saying: "There, go and make one great fool of yourself again."*

* See Dr. Scadding's *Toronto of Old*, p. 38. Mr. Baby's idiom was due to his French origin and training.

Such of the rioters as were possessed of means contributed to the fund according to their respective ability, but the others were not allowed to bear more than a very small share of the loss.

The only other documentary evidence to be had on the subject of the subscribers to the fund is to be found in the "Statement of Facts" of Samuel Peters Jarvis himself. "I have on my part to assure the public," he writes, "that so far from being indemnified by the contributions which from various motives were made for our relief, the burthen fell heavily upon such of us as had the means of paying anything; and I affirm that the share of the verdict which I myself had to defray, from no very abundant means, was such that if Mr. Mackenzie had made as much clear profit by his press during the whole time he has employed it in the work of detraction, he would not have found it necessary to leave the concern, and abandon it to his creditors." To which statement it may be added that a gentleman now living in Toronto distinctly remembers hearing Mr. Jarvis say that his own contribution to the fund was precisely £109; that that of Peter M'Dougall was about the same; and that none of the rest of the rioters paid anything, except through their parents or relatives.

The civil liability having been discharged, the public looked forward to a criminal prosecution, for it seemed outrageous that the perpetrators of such an offence against society should escape without any greater penalty than had thus far been exacted from them. Mr. Mackenzie himself seems to have been desirous of proceeding to extremities, although the amount which he had recovered was far more than compensation for any loss he had sustained, whether direct or incidental. But the brains of his professional advisers were cooler than his own, and saved him from the consequences of his want of judgment. Mr. Bidwell dissuaded him from taking any steps which might seem to be dictated by a feeling of revenge. It was represented to him that he was a decided gainer by the raid, not only in pocket but in popularity. The public sympathy had been with him from first to last. A policy of war to the knife on his part would certainly cool, and in some cases altogether alienate that sympathy. The jury's liberal verdict had placed him "in funds," and he was thus in a position to resume the publication of the *Advocate* under

favourable circumstances. The transaction had distinctly increased his prestige in the rural constituencies, and he might reasonably hope to be a successful candidate for Parliament when a suitable vacancy should occur. Such being the position of affairs, he was strongly advised to let well alone. Contrary to his habit, he proved amenable to advice, and refrained from a criminal prosecution.

The issue fully justified the advice of Mr. Mackenzie's counsellors. Several of the newspapers in the Province commended his forbearance, and contrasted his conduct with that of his enemies. But, it was asked, what was the Attorney-General about? How was it that he, who never failed to stretch his authority to the utmost when a Reformer rendered himself amenable to the law—how was it that he permitted such an outrage as this to pass without notice? Surely it was his duty to officially proceed against the wrong-doers. But the Attorney-General was deaf to all such remonstrances, and did not concern himself with the matter further than to maintain the most cordial relations with the persons implicated. How far his conduct in this respect was consistent will hereafter appear. Colonel Fitz Gibbon was rewarded for his zeal in a bad cause by receiving the appointment of Clerk to the Legislative Assembly, and the additional income thus afforded him left him neither better off nor worse than before.

The participators in perhaps the grossest outrage ever committed in the Provincial capital thus escaped, for the time, all due penalty for their misconduct. It may almost be said, indeed, that they escaped altogether, for though, as will hereafter be seen, seven of them were eventually brought to trial and convicted at the instance of another person, they received no adequate punishment, and were thus able to boast that gentlemen in their station of life in York were above the law.

Rash deeds often produce unlooked-for consequences. So it was in the case under review. The attempt to suppress the *Advocate* was the means of re-establishing it on a fairly satisfactory financial basis, and of extending its life for about seven years. The indignity to which the printing-office had been subjected, and the trial resulting therefrom, had furnished the best advertisements that could possibly have been desired. With a portion of the sum recovered from the hands

of the spoilers Mr. Mackenzie was able to satisfy the most pressing of his creditors. With the balance he provided himself with new printing material, and the *Advocate* soon made its appearance under more favourable auspices than ever. It continued to be marked by the same characteristics as during the first epoch of its existence. It was not conducted with more discretion, and there were as many gross personalities in its columns. It however contributed much to the spread of Reform doctrines, and during much of its life it rendered undoubted service to the party to which it yielded its support. Had the editor's judgment been commensurate with his energies, his journal would undoubtedly have been a great power for good. Even as it was, it probably acted to some extent as a check upon Executive aggression, and thus served a beneficial purpose in spite of its many weaknesses and shortcomings.

As for Mr. Mackenzie, his persecutions were by no means at an end. They had, in fact, only begun. Of the many other shameful indignities to which he was subjected—indignities which finally drove him into rebellion, and involved him in overwhelming disaster—the narrative will hereafter take full account. It is at present desirable to advert to a number of other pregnant examples of abuse of power in which Mr. Mackenzie had no special concern.

CHAPTER VI.

THE CASE OF CAPTAIN MATTHEWS.

CAPTAIN MATTHEWS, who, it will be remembered, had been returned to the Assembly for the County of Middlesex, gave great umbrage to the official party by allying himself with the Opposition. His birth and social standing, it was said, unfitted him for such companionship. The Captain himself was apparently conscious of no incongruity, and bent all his energies to the advancement of the Reform cause. Upon his first arrival in the country he could not be said to have had any political convictions at all. He had been bred a Tory, and his military career had been such as might naturally have led him to seek his allies in the ranks of those in authority. But his own experience of the abuses in the Land Office had impelled him to consider the political situation of affairs in Upper Canada generally, and the upshot of his deliberations had been his alliance with the new movement in the direction of Reform. Being a man of much local influence, his example had won to his side a number of the Middlesex farmers, more especially in the Township of Lobo, in which he resided. During his first session in Parliament he attracted considerable attention to himself, for he spoke frequently and well, and generally with a humorous eloquence which made him a favourite with those who were not bitter partisans on the other side.

It was to be expected that Captain Matthews's defection from the political faith of his ancestors would render him specially odious to the High Tories of Upper Canada. It was shameful, they thought, that an officer deriving an income from His Majesty's Government should entertain, much less give utterance to, such vile democratic opinions as were constantly heard from his lips. The Captain was indiscreet, and became more and more outspoken the oftener he was charged with radicalism; but

on no occasion did he utter anything savouring of disloyalty, for the very sufficient reason that there was no disloyalty in his heart. It was apparent to the Compact that his influence was most pernicious to them; yet no feasible plan for getting rid of him presented itself. Would it not be possible, by a little extra exertion, to deprive him of his pension? Could this laudable object be accomplished, the obnoxious Captain, who was of an impetuous temperament, would probably be goaded into saying or doing something really culpable—something which would place weapons in the hands of his enemies whereby he might be effectually silenced. The plan was at any rate worth trying. A system of espionage was accordingly adopted towards him.* During the sitting of the Legislature, myrmidons of the Executive dogged his footsteps wherever he went, in order to obtain some grounds for a hostile accusation against him.

The spies did not have long to wait, for any shallow pretext was sufficient to serve as a peg upon which to hang an imputation of disloyalty, and the doomed man himself was unsuspicious of any design against him. The pretext actually resorted to was so utterly contemptible that one feels almost ashamed to record the attendant circumstances.

A company of theatrical performers from the United States visited York during the session which assembled in the autumn of 1825. The actors met with little encouragement, and became, in stage parlance, "stranded." Being reduced to extremity, they resolved upon giving a

*That spies were employed by Sir Peregrine Maitland and his Council, and that certain Government officials were encouraged to act in that capacity, are facts which will be denied by no one who familiarizes himself with the local legislative, official and newspaper literature of the time. An apparently well-informed contributor to *Blackwood's Magazine* for September, 1829, in an article headed "Colonial Discontent," comments on this retrograde system in the following terms:—"A system of espionage assumes that there is something which ought to be watched and to be prevented; and as the existence of such a system probably did exist in Upper Canada during the administration of Sir Peregrine Maitland, it may be said that so far his Government was led to act on false principles. . . We do not suppose that there was anything like an organized system, but only that tales to the personal disadvantage of the Anti-Ministerial party were too readily listened to. No doubt the members of that party were as credulous in listening to tales to the prejudice of the adherents of Government, but then they had it not in their power, like them, to inflict punishment. It is unnecessary to explain in what manner a system of espionage begets heart-burnings. It is to the public what tattle and malicious gossip are to private society, with this essential difference, however, that the tale of the slanderer is in time forgotten or refuted, whereas the report of the spy is received in secret, placed in the confidential archives of office, and referred to as a testimonial of character, in which such set of testimonials can be applied with effect when the occasion arises."

special performance for the delectation of the members of the Legislature, whose patronage was solicited for the occasion. Sixteen or eighteen of the members—among whom was Captain Matthews—complied with the solicitation, and the performance took place at the little York theatre on the night of December 31st. During the intervals between the acts the orchestra played the national airs, "God Save the King," "Rule Britannia," and "The British Grenadiers." Several persons in the audience—Captain Matthews among the number*—apparently out of compliment to the actors, all of whom were from across the lines, called out for "Yankee Doodle" and "Hail Columbia." The demand was complied with, at least in part. The orchestra were unable to play "Hail Columbia," but the audience were regaled with the lively strains of "Yankee Doodle." Captain Matthews joined in the applause which followed, and removed his hat, calling upon others to do the same. The weight of evidence would seem to favour the idea that he was not the first to raise his hat, or to request the removal of the hats of his fellow-members. At all events the request was generally complied with. And this was the gist of the story. Captain Matthews's share in the events of the evening was the having joined in the demand for the two objectionable airs, in the applause which ensued upon the rendering of one of them, and in the request for the uncovering of heads. These dire offences sealed the doom of a gallant officer who had served his king for more than a quarter of a century, and whose acquiescence in the call for the national airs of the republic was probably due, at least in part, to the effervescence of feeling begotten of a good dinner.

It is difficult to trace, step by step, the progress of the measures adopted against him. Distorted and exaggerated accounts appeared in *The Kingston Chronicle* and *The Quebec Mercury*. But it is hardly likely that any *ex officio* notice would have been taken of the affair if the news-

* Mr. Mackenzie, in his *Sketches of Canada and the United States*, p. 419, denies that Captain Matthews called for these airs, as stated in the text. But anyone who carefully examines into the Provincial events of those times will not be long in arriving at the conclusion that Mr. Mackenzie's unsupported testimony, more especially as to matters in any way coming within the scope of politics, is of very little value. The evidence as to the Captain's having called for "Yankee Doodle" is conclusive. That his doing so constituted a serious offence is another matter, as to which there will, at the present day, be very little difference of opinion.

paper reports had not been backed by a specific charge. Captain Matthews appears to have been secretly accused to the military authorities. He soon afterwards received a letter from the military secretary to the Earl of Dalhousie, Commander of the Forces in Lower Canada, stating that that dignitary's attention had been attracted by a report in the public prints of a representation that Captain Matthews had, in a riotous and outrageous manner, in the theatre at York, called for the national airs and tunes of the United States, "urging the audience there assembled to take off their hats, as is usual in the British Dominions in honour of 'God Save the King.'" The letter went on to say that "finding the statement corroborated, upon inquiry," the Commander of the Forces called upon Captain Matthews to explain conduct which was pronounced to be "utterly disloyal and disgraceful." Even this was not all. By a subsequent letter, received from the Board of Ordnance, the Captain was directed to repair forthwith to Quebec, and there remain until he could, by the first vessel in the spring, proceed to England, there to give an account of his conduct. This order was stated to have been made in consequence of a communication from the authorities in Canada to Lord Bathurst, the Colonial Secretary, and by him transmitted to the Master-General and Board of Ordnance.

Mr. Mackenzie asserts that the object of the authorities was to get the Captain out of the Province, and thus deprive the Opposition of his vote, "in order to give the local Government a preponderance in the Legislature against the people's rights."* This, however, can hardly be accepted as a full or true explanation, as the Captain's absence at the time would not have given such a preponderance to the Government on any test vote. The weakening of the Opposition may or may not have been one of the objects sought to be achieved by the Captain's accusers. If so, it signally failed. Captain Matthews, be it understood, was not in receipt of half-pay, but of a pension. He had served twenty-seven years, and, on his corps being totally disbanded, he had settled in Upper Canada with the approbation of the Government. Having since been elected a member of the Provincial Assembly, his first duty was to that body, and it was necessary that he should obtain its leave before proceeding to obey

* *Sketches of Canada*, etc., p. 419.

the order of the Master-General. Accordingly, on Thursday, the 28th of December, 1826, he rose in his place and made a motion involving an application for leave of absence. He explained the circumstances, and, in the course of the debate which ensued, expressly stated that he asked for leave, not with any desire of its being granted, but merely in order that the House might do its duty. The Opposition stood faithfully by him in this emergency. The House felt that the honour of one of its members was concerned. It refused the application for leave, and, on motion of Mr. Rolph, set on foot an inquiry into the circumstances on its own behalf.

The inquiry was searching and minute, and the witnesses were not examined in presence of each other. Much of the evidence was beyond measure ludicrous and absurd. The scene at the theatre was described by one witness after another in endless variety. The merits of "Yankee Doodle" and "Hail Columbia," philologically and æsthetically, were made the subjects of the gravest investigation. It appeared that with the exception of Mr. John Beikie, Clerk of the Executive Council, and a very few of the townspeople, the audience was entirely made up of members of the Legislature. There were no ladies present, and, as it was New Year's Eve, the audience generally felt a considerable freedom from restraint. Many of the members had partaken freely of the cup that cheers—assuredly not the cup indicated by Cowper—and were in the blissful condition of Tam O'Shanter upon a certain memorable occasion to which no more specific reference is necessary. In plain English, some of them were so drunk as to be unable to recall anything that occurred. All were full of mirth and jollity, and the scene enacted was of the most uproarious description. Three grave legislators "danced while 'Yankee Doodle' was played." Several others had reached the quarrelsome stage of inebriety, and, in the language of one of the witnesses, "showed fight." Mr. Philip Vankoughnet, one of the members for Stormont, was constrained to admit that he had stripped off his coat, and threatened to knock somebody down. Captain Matthews, among others, called for "Hail Columbia" and "Yankee Doodle," but the general opinion among the more sober of the party appeared to be that he had done so "in derision." It was a bibulous age, and sobriety

was the exception rather than the rule. The whole affair was little better than a bar-room orgie, and could properly be regarded in no other light.

When the Assembly's report made its appearance, early in 1827, Captain Matthews was fully exonerated, so far as that body was concerned, from everything savouring of disloyalty. "The circumstances of the transaction"—thus ran the report—"as they are related without the contradiction of a single witness, irresistibly bespeak the absence of that disloyalty with which it has been basely attempted to sully the character of a most honourable man." The report moreover read a sharp lesson to the promoters of the accusation against him. It declared that "If every effervescence of feeling upon every jovial or innocent occasion is, in these Provinces, to be magnified into crime by the testimony of secret informers—if there can longer exist a political inquisition which shall scan the motives of every faithful servant of the public—if the authorities in Canada shall humble the independence of the Legislature by scandalizing its members and causing them to be ordered to Quebec, and thence to England, to sustain a fate which, under such corroboration as Lord Dalhousie received, might cover them with ignominy, or bring them, however innocent, to the block—or if the members of our community shall be awed into political subserviency by fear of oppression, or lured by the corrupt hope of participating guilty favours, then, indeed, will the prospect before us lour, and this fine Province become a distant appendage of a mighty empire, ruled by a few aspiring men with the scourge of power."*

The Committee professed their inability to learn by whom the pernicious representations had been made to the newspapers, or to the authorities in Canada, or from what source Lord Dalhousie had obtained his "corroboration." They expressed their conviction that there was no ground for the charge preferred against Captain Matthews, the malignity and falsity of which they believed to have derived their origin and support from political hostility towards him.

The United States press was loud in its expressions of contempt. "Behold how great a matter a little fire kindleth;" said *The New York Enquirer*—"truly, there is something very undignified in such vexatious

*See Journal of Assembly for 1826-7, Appendix P. See also Journal for 1828, p. 122.

stretches of authority"—referring, of course, to the attempt to drag Captain Matthews across the Atlantic on a charge depending on such ridiculous evidence. Attention was drawn to the fact that the national airs of Great Britain, "God Save the Queen," and "Rule Britannia," are often heard at theatres and elsewhere in the republic without any such momentous consequences, and without being received either with laughter, dancing or contempt. "The evidence," continued the *Enquirer*, "does not speak very strongly in favour of the amenity and decorum of the M. P.'s of Upper Canada. If calling for one of our national airs, in a time of profound peace, within a few miles of the frontiers, is regarded as an unpardonable crime by the British Government, who shall wonder or complain that the British people are full of prejudice against us." The Liberal press of the Maritime Provinces harped to the same tune. "Really," remarked *The Halifax Recorder*, "we think people must have their wits about them now-a-days, if such things as these are to be construed into disaffection."

But though Captain Matthews had been cleared by the Legislature, he had still to run the gauntlet of the military inquisition. They could not compel his attendance during the existence of the Parliament then in being, but they possessed an effectual means of reducing him to ultimate submission. This power they exercised. His pension was stopped—a very serious matter to a man with a large family and many responsibilities. He continued to fight the battles of Reform with dogged courage and pertinacity as long as his means admitted of his doing so, but he was soon reduced to a condition of great pecuniary distress, and was compelled to succumb. Broken-hearted and worn out, he resigned his seat in the Assembly, and returned to England, where, after grievous delays, he succeeded in getting his pension restored. He never returned to Canada, and survived the restoration of his pension but a short time. Thus, through the malignity of a selfish and secret cabal, was Upper Canada deprived of the services of a zealous and useful citizen and legislator, whose residence among us, had it been continued, could not have failed to advance the cause of freedom and justice.

CHAPTER VII.

THE NIAGARA FALLS OUTRAGE.

THE case of William Forsyth—commonly known in the chronicles of the time as the Niagara Falls outrage—differed materially from that of Captain Matthews, not only in kind, but in degree. In the latter case there was no gross violation of the decencies of life, or of the outward forms of law. The mischief was effected by means of spies and secret information, and the damage inflicted was incidental rather than direct. The Forsyth case, on the contrary, was more in the manner of the type riot. It was a violent and utterly unjustifiable exercise of brute force. But in one important respect it was worse than the type riot. *That* display of ruffianism had been accomplished without the open approbation of the authorities. The Niagara Falls outrage was committed not only with the full assent, but by the express command, of the Lieutenant-Governor himself. Not even the poor excuse that it was done in a moment of anger or irritation could be made for it. It was done deliberately, in cold blood, and was as deliberately repeated. It was a simple case of Might *versus* Right.

A few words of explanation are necessary by way of prologue.

In the year 1786, before the setting apart of Upper Canada as a separate Province, and just after the commencement of the settlement of the Niagara Peninsula by Butler's Rangers, the territory contiguous to the west bank of the Niagara River was surveyed and laid out into lots by Augustus Jones, a surveyor whose name is familiar to all students of the early history of this Province. In pursuance of instructions received from the Government, Mr. Jones, in laying out these lots, made a reservation of a chain in width—sixty-six feet—along the top of the bank.

The reservation was made partly with a view to the military defence of the Province, and partly for the purpose of preserving a convenient communication.* It was expressly specified in the Crown Patents to the owners of adjoining lands, and embodied in all subsequent deeds upon successive transfers. It may therefore be conceded that the Crown's title to the reserved land was indisputable.

In the year 1827, and for some time previously, the principal inn on the Canadian side of the river at Niagara Falls was owned and kept by one William Forsyth. The man and his establishment were well known to travellers, and "Forsyth's" had a high reputation as one of the most comfortable houses of public entertainment in the country. During the heat of summer, many residents of York paid more or less frequent visits to the Falls, not more to enjoy the change of air and the majestic scenery, than to partake of "mine host" Forsyth's hospitality. The inn was in close proximity to the great cataract, and was known as the Niagara Falls Pavilion. It was built on ground that bordered upon and ran up to the Government's reservation, which alone intervened between it and the top of the bank.

Mr. Forsyth drove a flourishing business, but, like some of his successors at the same spot, his greed grew with his increasing gains, and he was not content to grow rich by degrees. He determined to augment his income by the erection of a high post and rail fence, placed so as to shut out visitors from approaching near to the Falls, and rendering it necessary for them to pass through his house before the desired view could be obtained. It should be mentioned that Mr. Forsyth, in addition to the Pavilion and its immediate grounds, owned the adjoining lands for a considerable distance, including all the points from which the great spectacle was to be seen to advantage. By the erection of the fence, therefore, visitors would be debarred and shut off from all that was best

*See the letter from Chief Justice Robinson to Lieutenant-Colonel Rowan, Secretary, etc., etc., dated at York, 31st December, 1832, and appended to the Report of the Committee of the House of Assembly on the Petition of William Forsyth, dated April 1st, 1835. In one part of this letter the Chief Justice says that the laying out of the lots took place "some time between the years 1785 and 1790, and while General Haldimand administered the Government of Canada." General Haldimand did not administer the Government of Canada during any part of the time thus specified—a fact of which Chief Justice Robinson ought to have been aware. In a subsequent part of the same letter he properly gives the date as 1786.

worth seeing in the neighbourhood, until they had passed through his inn; and it was of course anticipated that most of those so passing through would spend more or less money on the premises. There was, however, one rather serious objection to the contemplated change. It would involve the enclosure of the Government reservation, a proceeding which was not likely to be permanently tolerated. Forsyth was probably ill advised by his attorney in the matter, for he seems to have been really of opinion that the Government's title to the land was at least open to question, and he had been permitted to occupy a portion of it without remonstrance for about six years. Sometime during the early spring of the abovementioned year—in time to catch the expected influx of summer visitors—he carried out his design, and constructed the enclosure. His house was thus converted into a thoroughfare, which necessarily 1827. gave rise to a greatly increased number of visitors, and to much additional expenditure within its walls. But the public serenity soon began to show signs of disturbance. There was a rival innkeeper named Browne, who was not long in discovering that his own losses were in proportion to Forsyth's gains. He bestirred himself in the matter, and soon succeeded in arousing a good deal of indignation in the minds of visitors. No one was allowed to either enter or pass by his door without being importuned to sign a petition to the Government, praying for a removal of the objectionable fence. Other persons residing in the neighbourhood took umbrage at the innovation, and also made appeals to the Government on the subject. In this way several numerously-signed petitions were obtained and forwarded to headquarters.

Such proceedings as these were in themselves reasonable and proper enough. Forsyth had acted in a selfish and unwarrantable manner, and it would have been nothing more than he had a right to expect if the Government had instituted immediate action against him. It would have been an injustice to the public if he had been permitted to enjoy his monopoly undisturbed. But neither the trespasser himself nor any of those who protested against his conduct was prepared for such high-handed measures as were actually resorted to; measures which effectually proved the unfitness of Sir Peregrine Maitland for his high office; which led to his being cordially hated throughout the

length and breadth of Upper Canada; and which doubtless had something to do with his removal to another sphere of action.

One day about the middle of May, when the enclosure had been erected about six weeks, and when the season's regular flow of tourists had fairly set in, the landlord of the Pavilion received a call from Captain George Phillpotts, of the Royal Engineers, who then held command in the District. The latter demanded why Forsyth had presumed to fence-in the Government reserve. Forsyth replied, denying that the reserve belonged to the Government, and asserting his own title thereto, whereupon he was informed that unless the enclosure was removed without delay, he, Captain Phillpotts, would himself undertake its removal. Forsyth professed to feel strong in his rights, and threatened to prosecute the Captain or any one else who might interfere with his property. Here the interview ended. Several days afterwards—on the 18th—the landlord was summoned to his door by a message that a gentleman there wished to see him. The gentleman proved to be Captain Phillpotts, who was accompanied by a sergeant and four other soldiers in fatigue jackets, without arms. Major Richard Leonard, Sheriff of the Niagara District, and Augustus Jones, who had made the original survey of the property forty-one years before, were also in attendance. The Sheriff, who had merely accompanied the party at the Captain's request, took no part in the subsequent proceedings, but contented himself with quietly looking on. Mr. Jones had been brought for a specific purpose, and, at the request of Captain Phillpotts, he then and there made a hasty re-survey of the reserve, the limits of which he indicated by pickets. Upon the completion of this task, the Captain demanded that Forsyth should immediately remove the enclosing fence, and upon his refusal to do so, the soldiers, under orders from their Captain, deliberately cut and threw down the fence, exposing the gardens, meadows and about sixty acres of growing crops to waste. A blacksmith's shop which had been erected on the reserve was demolished, and the building material thrown over the bank. The Captain avowed that he was acting under express orders from the Lieutenant-Governor, which proved to be the fact.

Having accomplished his purpose, Captain Phillpotts and his soldiers

departed, accompanied by the Sheriff and the surveyor. They were no sooner out of the way than Forsyth and his servants set themselves to work to repair damages, and before nightfall the enclosure was rebuilt; the premises, with the exception of the blacksmith's shop, being restored to the condition in which they had been before the assault upon them. But intelligence of the restoration was speedily conveyed to Sir Peregrine Maitland, who again despatched the same emissary, and the drama of demolition was reënacted. The landlord of the Pavilion then gave up the contest, so far as any attempt at reconstruction was concerned, and proceeded to obtain redress by due course of law.

Now, it may perhaps be admitted that Forsyth was rightly served, or at any rate that he deserved little or no sympathy. His enclosure of the Crown reserve had been without any strict colour of right, and had been due to pure greed and selfishness. But his blacksmith's shop had been constructed on the land as far back as 1821, when he had purchased the adjoining lot from William Dickson, and no one had ever questioned his right to maintain it there. He seems to have thought that he had as good a claim to the property as anybody. He had been informed, contrary to the fact, that the Government reserve extended only to the lower bank, and did not cover the land at the top. He might easily have discovered that his information was misleading, but he had not chosen to take so much trouble, and deserved to suffer the legal consequences of his neglect. He could undoubtedly have been dispossessed by means of an action of ejectment, with the costs of which he would justly have been saddled. But he had a right to expect that, after being allowed to remain so many years in undisturbed possession, he should only be dispossessed by civil process. It was not a case where an arbitrary removal was justifiable, such as may lawfully take place when it becomes necessary to abate a nuisance. But it was above all things intolerable that the military should have been employed for such a purpose. Sir Peregrine Maitland, in sending Captain Phillpotts on the expedition, had acted, not in his capacity of Lieutenant-Governor, but in that of Major-General Commanding the Forces in Upper Canada. This it was that wrought up the public pulse to such a pitch of excitement. This it was that created a dangerous antagonism between the people and the soldiery, and led to

frequent quarrels and bickerings between them. The Committee subsequently appointed by the Assembly to investigate the subject echoed the popular sentiment when they reported that "a person long in possession of land, like the petitioner, ought to have been ejected by the law of the land, which is ample, when impartially administered, for securing the rights of property, but the interference of the military, by such acts of violence, for maintaining supposed or contested rights, is justly regarded with jealousy in all free countries, and ought to be seriously regarded in a colony where the most unprecedented outrages have been perpetrated without prosecution, and even followed by the patronage of the local Government upon the wrong-doers."* The presence of the civil power on the occasion, in the person of the Sheriff, had been even an aggravation of the offence, for the Sheriff had thus been made to lend his countenance to the proceeding. As for the Lieutenant-Governor's action in the matter, he himself was solely to blame, for his intentions were not made known to the Executive Council, or, so far as appears, to any member of that body. It was simply and solely a barefaced and most impudent abuse of authority, the responsibility for which rests upon no shoulders but his own.

Forsyth had no success in his appeals to the law. He brought two actions of trespass, one of which was against Sheriff Leonard and Captain Phillpotts jointly, for removing the fence and blacksmith's shop; and the other of which was against Captain Phillpotts alone for removing the fence the second time. Sir Peregrine instructed Attorney-General Robinson to defend both these suits, and to vindicate the Crown's title to the reserved land.† To effect the latter object in the most formal and decisive manner, the Attorney-General filed an information for intrusion against Forsyth, upon which a verdict was rendered in favour of the Crown. The plaintiff altogether failed in his action against Phillpotts

*See the report, p. iv., appended to the *Seventh Report of the Grievance Committee.*

†The defence of these two suits would seem to have been the means of considerably augmenting the Attorney-General's already ample income. From certain accounts sent down to the Assembly it appears that a sum of £127 6*s.* 6¾*d.* sterling were paid to him during the year 1834 for "expenses incurred by him in defending two suits with costs in reference to the military reserve near the Falls of Niagara."

and the Sheriff, and the decision in that case rendered it useless for him to proceed with the action against Phillpotts alone.*

While those suits were in progress, Forsyth, finding that public opinion, if not in his favour, was at least hostile to the Lieutenant-Governor, sent in a petition to the Assembly, setting forth the circumstances, and praying for redress. This was during the session of 1828. The Assembly entertained the petition, and appointed a Committee of Inquiry. The Committee proceeded to inquire accordingly. While their investigations were in progress they resolved to examine two of the Government officials, who, as there was reason to believe, could throw light upon Sir Peregrine's reasons for such arbitrary conduct as that of which he had been guilty. The officials whose evidence it was thought desirable to obtain were Colonels Coffin and Givins, both of whom were heads of departments. The former occupied the position of Adjutant-General of Militia for Upper Canada; the latter was Superintendent of Indian Affairs. Both of these gentlemen were summoned to attend before the Committee at a specified time. In this there was nothing strange or unusual. It was a matter of frequent occurrence for officials of the Government, high and low, to be summoned before Parliamentary committees while the Legislature was in session, and there was no question as to the right of such committees to require such attendance. In this instance, however, the persons summoned were not permitted to obey the behests of the Committee, and in the attendant circumstances there were pretty plain indications of crookedness and collusion between the Crown officers and Sir Peregrine Maitland. Each of the two officers concerned, immediately upon receiving his summons, caused the fact to be communicated to the Lieutenant-Governor, and each wrote a shuffling letter to the Chairman of the Committee. Later in the day the Lieutenant-Governor positively declined to permit the attendance of the persons summoned, assigning as a reason that he had not been made acquainted with the facts as to which it was desired to

1828.

*There was a very general belief throughout the Niagara District at the time that Major Leonard, who was an obedient servant to the Executive, had manipulated the lists from which the jurors in those cases were selected. The truth or falsity of the belief cannot now be pronounced upon, the circumstances upon which it was founded being buried in oblivion.

interrogate them. Now, when one considers all the facts and circumstances of the case, one is driven to the conclusion that Colonels Coffin and Givins were in possession of certain information which the Executive, or at any rate the Lieutenant-Governor, had a strong interest in keeping secret. Why else were they forbidden to attend? The reason assigned was certainly not a sufficient one. In the first place it was not founded upon fact. That the Committee had been appointed for the specific purpose of investigating the circumstances connected with the Niagara Falls outrage was matter of common notoriety. When the two Government officers were summoned to give evidence before that Committee there could be no doubt that the intention was to examine them touching their knowledge of the matter in hand.* Some years before this time, when the Compact were all-powerful in the Assembly, as well as in the Upper House, a custom had been introduced of notifying the Lieutenant-Governor whenever it was proposed to examine any of the Government officials as witnesses before a Parliamentary committee. It had been customary to specify, in the address of notification, the subject on which it was intended to take evidence. This, however, had been a mere matter of courtesy and conventionality, upon which nobody had any right to insist; and the practice had not been uniform or consistent, various instances having occurred where Crown officers had been summoned and examined as witnesses without any such notification having been given. Upon such a flimsy pretext, however, did Sir Peregrine Maitland base his refusal to permit the two witnesses to attend for examination in the Forsyth case.

The Chairman of the Committee duly reported to the Assembly the non-attendance of the witnesses, and that body determined that its authority should not thus be defied and set at naught with impunity. The chief offender, the Lieutenant-Governor—or the Commander of the Forces, if he was to be considered as acting in that capacity—was of course beyond reach, but proceedings were forthwith instituted against

* "He [Sir Peregrine Maitland] must have inferred that the Committee proposed to examine these officers respecting the employment of a military force for the ejecting of Forsyth from the land."—See Despatch from the Colonial Secretary, Sir George Murray, to Major-General Sir John Colborne, dated 20th October, 1828, appended to the Report on Forsyth's petition.

the recalcitrant witnesses. Warrants were issued against them by the Speaker, in order that they might be brought up before the House, in custody of the Sergeant-at-Arms, to answer for their contempt. Acting under legal advice, they declined to submit to such authority unless compelled to do so by force; and they boldly threatened that in case of force being resorted to they would prosecute the Speaker. It is to be presumed that the warrants would in any case have been acted upon, but this impudent threat left the Assembly no alternative. If Government officers, paid out of the public purse, were to be allowed to defy that branch of the Legislature which alone represented the popular voice—if they were to be permitted to treat its mandates with contempt, and to threaten its representative with ulterior consequences in the event of those mandates being enforced—then, indeed, liberty and equal rights were at a low ebb in Upper Canada. The warrants were promptly executed, the house in which the two officials had ensconced themselves being forcibly entered for the purpose. Being brought to the bar of the House, and charged with their contempt, they sought to vindicate themselves by pleading the action of the Lieutenant-Governor in refusing to sanction their attendance. The House then adopted a resolution under which they were handed over to the custody of the Sheriff, and committed to the common jail of the Home District. They formally notified the Lieutenant-Governor, through his private secretary, of the calamity which had come upon them through obedience to his behests, and requested that the advice and assistance of the Crown officers—that is to say, of the Attorney-General and Solicitor-General—might be vouchsafed to them. They however remained in confinement only three days, for the Lieutenant-Governor, in accordance with an intimation previously given, prorogued the Legislature on the 25th of March—they had been committed on the 22nd—and the power of the Assembly to commit did not extend beyond the time when it was actually in session.

Colonels Coffin and Givins carried out their threat, and sued the Speaker for damages for false imprisonment. The right of the Assembly to commit for contempt was however a matter too well established, and was confirmed by the Court of King's Bench in another cause then pending. So that the Adjutant-General of Militia and the Superintendent

of Indian Affairs, in addition to their respective bills of costs, had their three days' imprisonment as a reward for their fealty to Sir Peregrine Maitland, and for their disloyalty to the Canadian people.

Sir Peregrine appears to have felt a little dubious as to how his proceedings would be regarded at the Home Office. It was quite certain that the Colonial Secretary would hear of the affair, but that dignitary's approval was open to question. It would at all events be well that the official mind should receive its first impression on the subject from Sir Peregrine himself, who accordingly lost no time in sending over his own version of the transaction. His despatch, which bears internal evidence of having been written or revised by Attorney-General Robinson, is dated the 29th of March—the fourth day after the prorogation. Under the pretext of asking for advice as to how he should act in the future in case of any of the officials being summoned before Parliamentary committees without any notification having been made to himself, he recounts the story of the Niagara Falls outrage. His narrative, it is almost needless to say, is from first to last garbled and one-sided. Forsyth is referred to therein as "a person notoriously of indifferent character;" and the Assembly and its committees are maligned in language highly improper to be employed in a confidential communication from the Lieutenant-Governor of a colony to his superiors at home.* The Colonial Secretary, however, was shrewd enough to penetrate the veil of misrepresentation in which the despatch was enveloped, and to arrive at a pretty just appreciation of the merits of the case. He officially expressed his opinion that there had been adequate grounds for inquiry by the Assembly. "I cannot but consider," he wrote, "that Sir Peregrine Maitland would have exercised a sounder discretion had he permitted the officers to appear before the Assembly; and I regret that he did not accomplish the object he had in view in preventing Forsyth's encroachments by means of the civil power, which is said to have been at hand, rather than by calling in military aid." This despatch, however, was written, not to Sir Peregrine Maitland himself, but to his successor,

*See the despatch, appended to the Report on the Forsyth Case, at end of Grievance Committee's Report. The Colonial Secretary's despatch quoted in the text will be found appended to the same Report.

Sir John Colborne. The Forsyth case, coming, as it did, in the wake of other ill-advised proceedings on the part of Sir Peregrine, determined the Home Government to withdraw him from Upper Canada, where it was quite evident that his usefulness—if he had ever had any—was gone. He was transferred to Nova Scotia, whither it is not necessary that this narrative should follow him.

With respect to Forsyth, it may be added that, being unable to obtain any recompense for the Phillpotts invasion, and being harassed by protracted litigation, he sold his property at Niagara Falls at a price considerably below its value, and removed from the spot. It cannot be said that he deserved much sympathy, for he had brought his losses on himself by his own selfishness. He took advantage of the situation to pose in the character of a martyr to Executive tyranny, and he succeeded in deceiving many of his contemporaries into the belief that he was a much injured man. The historical interest, however, centres not in him, but in the consequences arising out of the employment of soldiers to do the Sheriff's work in a time of profound peace, and without any initiatory civil process having been issued. The popular excitement consequent on the outrage encouraged Forsyth to petition the Assembly. The petition led to the appointment of the Committee of Inquiry, which in its turn led to the summoning of witnesses and the conflict between the Assembly and the Lieutenant-Governor. The conflict led to the latter's removal, and, from that point of view, is not to be regarded in the light of an unmixed evil.

CHAPTER VIII.

THE "AMOVAL" OF MR. JUSTICE WILLIS.

THE Forsyth embroilment extended over a long period, and from time to time during several years it continued, at longer or shorter intervals, to thrust itself upon public attention. Meanwhile it was not the only instance of abuse of power on the part of the Executive to which the people of Upper Canada were constrained to submit. Several other notable contemporaneous examples shared with it in the unenviable work of widening the breach between the Government and the people, and in destroying popular confidence in the impartial administration of justice. It is a rather singular fact that of all the many high-handed measures resorted to during the existence of the Ninth Parliament, the one which aroused the greatest indignation was perhaps the least blameworthy of them all. It has been the fashion with writers who have dealt with this period of our history to represent the amoval of Justice Willis as being upon the whole the most glaring iniquity of the time. This view is not borne out by the facts. In the Willis affair Sir Peregrine Maitland had recourse to the espionage system, and certainly went to the utmost verge of his authority, but he cannot be said to have run violently in the teeth of precedent and good sense, as was done, for instance, in the Forsyth case. Nor can it be said that he acted with despotic rashness or precipitation. His decade of misrule in Upper Canada was characterized by many cruel, tyrannical and shameful deeds: deeds which stare out from the pages of the past with lurid distinctness. He has enough to answer for at the bar of history; and it is quite unnecessary to load the formidable indictment against him with surplusage or dubious matter. A careful and dispassionate examination of all the circumstances in the Willis case must convince the inquirer that the faults were not all on one side, and

that the Judge himself is bound to at least share with Sir Peregrine the responsibility for the bitterness arising out of the "amoval."

John Walpole Willis, whose name was destined to win considerable celebrity in the judicial annals of this Province, was a lawyer of good standing at the English Chancery bar. He came of a respectable county family, but had no hereditary expectations, and from his earliest youth had applied himself to study with a zeal begotten of the conviction that he would be compelled to depend upon his own exertions for a livelihood. He devoted himself with assiduity to studying the literature pertaining to the equity branch of the law. By the time he reached manhood he had acquired considerable erudition, and it was predicted of him that he would make a mark in his profession. He did his utmost to justify the prediction, for he had no sooner been called to the bar than he came before the world as an author. His first publication was a work bearing upon the law of Evidence. In 1820 he issued a work on Equity Pleading; and in 1827 appeared his treatise "On the Duties and Responsibilities of Trustees." These works obtained a fair share of recognition, and doubtless tended to promote his professional success. He enjoyed the reputation of being an industrious and painstaking lawyer, and a brilliant and accomplished member of society.

In 1823, when he had reached the age of thirty-one years, he was applied to for professional advice by the Earl of Strathmore. This event was destined to have important consequences. The advice led to important professional employment extending over several months, during which the clever lawyer was a frequent guest in the Earl's household, and on terms of intimate social intercourse with the family. In an unhappy hour for his future peace of mind he formed an attachment to Lady Mary Isabella Bowes Lyon Willis, one of his lordship's daughters. His attachment was reciprocated by the young lady, who was possessed of great personal attractions, and who might doubtless have looked forward to a more ambitious match; but her noble father had little to offer in the shape of dowry, and did not oppose her wishes. The marriage took place at Marylebone Church, in August, 1824. The bridegroom was then thirty-two years of age, and the bride had just completed her twenty-second year. This disparity was not sufficient to excite any remark,

for Lady Mary was mature for her age, and the bridegroom had scarcely taken leave of his youth. For about three years after the marriage the pair resided with Mr. Willis's mother, at Hendon, a pleasant suburb lying to the north-west of London; he meanwhile continuing the practice of his profession in town. All these circumstances materially contributed to the shaping of the young barrister's future career.

Mr. Willis enjoyed the social advantages which his union with a nobleman's daughter was certain to confer. These advantages were fully appreciated, but they involved certain inevitable consequences, the principal of which was a material increase in the domestic expenditure. As neither Lady Mary nor her husband was possessed of much property, and as the latter's income was almost entirely derived from his profession, he resolved to try for some public appointment whereby his pecuniary condition might be improved. Early in 1827 the project of establishing a Court of Equity in Upper Canada was for a short time under some sort of consideration at the Colonial Office. Through the influence of his father-in-law, Mr. Willis was mentioned as a most suitable man to undertake
1827. that important duty. His heart responded to the idea. He felt that he was well fitted for such a responsibility, and that a congenial sphere of usefulness would thus be presented to him. His vanity also seems to have been flattered by the prospect of being raised to the bench—even the colonial bench—at so early an age. Visions of social and intellectual supremacy among the magnates of Upper Canada doubtless presented themselves in alluring shapes before his mind. He had no difficulty in obtaining a promise that in the event of the contemplated appointment being made it should be offered to him. The project, however, was still in embryo, and—as the event proved—was not fully carried out until about ten years later. It was meanwhile desirable that a puisne judge of the Court of King's Bench for Upper Canada should be appointed without delay, and that position was offered to Mr. Willis. It was at the same time represented to him that his acceptance would in no wise interfere with the scheme of the establishment of a Court of Chancery, and that he would be none the less fitted to carry out such a scheme from his having resided for some time in the Province, and from his having become to some extent familiar with local laws and institu-

tions. After mature reflection he accepted the offer, and set out for Canada towards the end of the summer, accompanied by his wife, mother, sister and infant son.

His marriage had not proved in all respects a felicitous one. Lady Mary was imbued with patrician ideas, and bore herself towards her husband's family with considerable hauteur. She was very particular in exacting certain observances to which she considered herself entitled. There were doubtless faults on both sides. Mrs. and Miss Willis took umbrage at the patronizing airs of Lady Mary, who, in her turn, complained that she was made a cipher in her own house. There were also petty jealousies on the part of Lady Mary, which led to disputes between herself and her husband. Altogether the domestic establishment at Hendon was not a harmonious one, but the means of the family were insufficient to admit of the keeping up of two separate households. The true remedy for such a state of things lay in the exercise of a spirit of mutual forbearance—an exercise to which Lady Mary, at least, seems to have been little accustomed. Under such ominious auspices was the Willis household transferred from Hendon to Upper Canada.

The Willises reached the Upper Province on the 17th of September, and on the following day the new judge proceeded to Stamford Cottage, the summer residence of the Lieutenant-Governor, in the Niagara District. Having presented the royal warrant for his appointment, together with certain other documents, he was cordially received by Sir Peregrine. He dined and spent the evening at the Cottage. In the course of conversation he referred to the project of establishing a Court of Equity—which by this time was no secret—and was surprised to find that the theme was distasteful to his host, who, in a tone not to be misunderstood, remarked: "Sir, you have not got your Court of Equity yet." "The words," wrote Mr. Willis,* "made some impression at the time, and subsequent events tended to throw further light upon their meaning."

Upon his arrival at York, on the 20th, Mr. Willis was welcomed with apparent cordiality by the judiciary, the bar, and society generally. The

*See his "Narrative of Occurrences in Upper Canada," written from Bath to the Secretary of State for the Colonial Department, dated 5th December, 1828, and included in pp. 273–288 of the blue book on the subject issued by the Imperial Government in 1829.

leaders of local fashion vied with each other in their attentions to the ladies of the family, more especially to Lady Mary, who was almost overwhelmed with civilities. The new judge was sworn in on the 11th of October. He entered with avidity upon the duties of his office, and also made himself conspicuous in society, where he was from the first regarded in the light of a decided acquisition. He entered with keen zest into plans for party-giving and entertaining, and evidently derived heartfelt pleasure from receiving and dispensing courteous hospitalities. He attended several public meetings which had been called for charitable and other purposes, at all of which he spoke with what was considered a somewhat perfervid eloquence. In a word, he not only took the rank to which he was entitled by virtue of his office, but jumped at once into the position of a leader of society and social movements. His name was on everybody's lips. Persons to the manner born, who had been accustomed to fill the foremost places in the public eye, found themselves, for the time, almost superseded and ignored. Judge Willis duly appreciated the homage which was rendered to him, and exhibited himself to society in his brightest and most amiable colours. To a few great personages, however, it seemed as if the new-comer carried himself with wonderful *sang-froid*, and contemplated himself and his position with too much complacency. To them it appeared as if he regarded all the eager admiration which was lavished upon him as being nothing more than his transcendent qualifications entitled him to look for at the hands of the little world of York. He seemed, they thought, to accept it all as his just due. And the belief was not unreasonable on their part, for the Judge seems to have been in a measure carried off his feet by the attentions paid to him on every hand. His position was one calling for the exercise of calm judgment and discretion. It was not surprising that leading members of the bench and bar, who had long served the Government with zeal and acceptance, should entertain some jealousy at the appointment of an outsider to a place of high honour and emolument. Attorney-General Robinson, for instance, had filled his responsible office for many years, and the Crown had certainly no reason to complain that he had favoured liberty at the expense of prerogative. Hagerman and Boulton, too, had for years lent themselves to the purposes of the

Executive. It was not singular that these persons should feel as though their own claims to preferment had been passed over in favour of Judge Willis, a stranger to Canada, her institutions and her polity. Nor was it wonderful that their deportment towards the stranger should, in spite of themselves, be influenced by the feeling. Judge Willis was not long in discovering that some sentiment of this sort was in the air, but he does not appear to have made sufficient allowance for it, and manifested a disposition to carry things with a high hand. He entertained a poor opinion of the Attorney-General's professional attainments, and did not sufficiently conceal this opinion. He was at first disposed to think highly of Judge Sherwood's abilities, but erelong came to the conclusion that he had greatly overestimated them,* and plainly showed, by his conduct, that he attached little weight to his brother judge's decisions. This course was the very opposite to what would have been adopted by a discreet and really able man. Such a man would have made due allowance for jealousies which, under the circumstances, were almost inevitable. Such a man would have adopted a policy of friendly conciliation. Such a man would have refrained from making himself specially conspicuous, at least until he had been some time settled in his new career, and had become accustomed to the novel atmosphere. Judge Willis's conduct was the very reverse of all this. In his intercourse with his brother judges—one of whom, it must be remembered, was Chief Justice—he adopted a tone of superiority, and even, to some extent, of dictation. He was of course not to be blamed for dissenting from their opinions—which he very frequently did—provided that he was honest in his dissent; but he acted very cavalierly on such occasions, and in pronouncing his own judgments seldom thought it necessary to make any reference to the decisions of his brethren on the bench. It was impossible for the latter to ignore the fact that he despised, or affected to despise their legal attainments; and their recognition of this neces-

*There is a covert irony in the portion of Judge Willis's *Narrative* which refers to this subject. "I wished to think," he writes, "and from the attention he seemed to pay to business I actually worked myself up into the belief, which I frequently expressed, that Mr. Justice Sherwood was a *hard-headed* sensible man; but I became convinced that, though right in the former conjecture, yet so far as legal knowledge or abilities were concerned, I was mistaken in the latter part of my conclusion." The italics are Judge Willis's own.

sarily gave rise to irritation and anger on their part. They felt his conduct to be all the more disrespectful to them in consequence of his admitted want of familiarity with Common Law, his own reading and practice having been almost exclusively confined to the Equity branch of the profession.

In the very first judgment ever rendered by him, he gave utterance to sentiments which, to put the matter mildly, were very much out of place. The case was one brought by George Rolph, of Dundas, against T. G. Simons and others, for a gross outrage which had been perpetrated on the plaintiff, who was a brother of the Attorney-General's great political rival. The outrage had arisen out of private complications, and no political question arose in the course of the trial. In concluding his judgment Mr. Willis took occasion to remark that he had formed his opinion of the case on its intrinsic merits, unbiassed by any political considerations. He added that he was totally devoid of party feelings, and that it would ever be his most earnest desire to render to every one impartial justice. It goes without saying that these are very proper sentiments on the part of an occupant of the judicial bench. Such principles were especially required in Upper Canada, where there had long been much judicial partiality and frequent miscarriages of justice by reason of political differences. But a judge should at least assume that his integrity is taken for granted, and should deem it beneath his dignity to attempt any vindication of his rectitude while an occupant of the bench. Moreover, there were no circumstances to call forth such expressions as were used by Judge Willis. No hint of any partiality had ever been heard against him. There had been no opportunity for any display of partiality by him, for he then took his seat on the bench for the first time. Saith the proverb: "He who makes unnecessary excuses accuses himself." In this case the Judge certainly indulged in wholly unnecessary self-vindication. And there were reasons why any such vindication by him was especially indelicate. The Radical newspapers had heralded his arrival as the dawn of a new era, when judicial corruption would cease in the land. It is pretty evident that he had been flattered by the eulogy, and that he now went out of his way to administer a covert reproof to his colleagues on the bench. His remarks were

undoubtedly taken in that sense, and tacitly resented by them. It may have been that they were all the more ready to take the remarks as applying to themselves from their consciousness of past shortcomings; but it was not from a brother on the bench—one, too, who had been only a few weeks in the country—that they should have been subjected to reproof.

To the feelings of his colleagues, however, Mr. Willis paid little consideration. His heart was specially set upon the establishment of a court of equitable jurisdiction, and to this end he bent much of his energy. He forced the matter upon the attention of the Attorney-General, who, he found, differed from him in respect of certain important details. He also prepared and submitted a scheme to the Lieutenant-Governor. He found great difficulty in inducing any member of the Government to discuss the matter with him. He was informed that an Act of the Provincial Legislature was considered necessary to the creation of such a court as the one contemplated by him. In this opinion he did not coincide, but by way of expediting matters he bestirred himself with a view to bringing about the necessary legislation. After a Bill, originally prepared by his own hand, had been introduced into the Assembly, he attended to hear the debates, and fraternized with Rolph, Bidwell, and other members of the Opposition—a circumstance which was afterwards very strongly urged against him at the Colonial Office. The Bill did not run smoothly, and was denuded of certain clauses which he deemed to be essential to the successful carrying out of the scheme. He vainly endeavoured to bring the Attorney-General round to his view of the matter. Mr. Robinson had too long been supreme in all legal affairs to submit to any dictation, more especially from one towards whom he bore no good will. Judge Willis found himself opposed and thwarted at every turn; and he erelong discovered that the Government were averse to the scheme, although the aversion was not directly avowed. He then recalled the Lieutenant-Governor's remark on the subject made to him some months before at Stamford Cottage. Certain dubious expressions which had from time to time fallen from the lips of the Attorney-General, the Solicitor-General, the Judges, and other prominent officials also recurred to his mind. As for Attorney-General

Robinson, "I at length discovered," wrote Judge Willis, "that any proposition that did not originate with himself was not generally attended with his approbation."*

A despatch from the Colonial Secretary to the Lieutenant-Governor was promulgated about this time, from which it appeared that the project of establishing a Court of equitable jurisdiction was in abeyance, or had, for the time, been abandoned. Judge Willis was greatly disappointed at this abandonment, which, in conversation, he openly ascribed to the influence of Sir James Scarlett, the English Attorney-General, with whom he had once had some unpleasantness while on circuit. But it also became known about the same time that Chief Justice Campbell was about to retire from the bench, and that his office would accordingly soon be vacant. Judge Willis lost no time in making application for the post. Neither did Attorney-General Robinson, whose application was backed by the entire influence of the Upper Canadian Executive. Here was a fresh ground of rivalry, whereby the unpleasant relations between these two officials were intensified. It soon became impossible for the new Judge and the Attorney-General to come into contact without feelings and expressions indicative of personal hostility. The hollow friendship which had at first seemed to subsist between them was cast to the winds, and all social intercourse between them was at an end. Any proposition emanating from Judge Willis was systematically opposed by the Attorney-General. The Judge in his turn availed himself of several opportunities of showing how little weight he attached to the Attorney-General's opinions. Worse still, he brought upon himself the lasting indignation of the Lieutenant-Governor. It would perhaps be more correct to say that his wife brought this calamity upon him, for the origin of the trouble was a hot dispute between Lady Mary Willis and Lady Sarah Maitland on a question of rank and precedence. In this quarrel it is quite clear that Lady Mary was in the wrong, but the whole affair was utterly contemptible on both sides. The ladies dragged their respective liege-lords into the dispute, and each of the latter espoused the side of his helpmeet. Sir Peregrine necessarily got the better of his adversary, whom he never forgave. It is impossible to

* See Judge Willis's *Narrative*, ubi supra.

say how far this unseemly women's wrangle contributed to the humiliation which Judge Willis was subsequently compelled to endure, but it is pretty clear that from that time forward Sir Peregrine was bent upon getting his adversary removed from his position. Unhappily the Judge, by his want of discretion, made this resolution comparatively easy of accomplishment. He constituted himself a sort of general censor of judicial and official shortcomings, and from his seat on the bench gave utterance to petulant and unbecoming strictures on various transactions with which he had no need to concern himself.

At the York Assizes held in April, 1828, Judge Willis came into such serious public collision with the Attorney-General that the affair 1828. was bruited abroad, and made considerable noise throughout the Province. On Thursday, the 10th of the month, Francis Collins, editor of the *Freeman*, was brought up on certain indictments for libel preferred against him by Attorney-General Robinson, under circumstances which will be detailed in a subsequent chapter. The bench was occupied by Mr. Justice Sherwood. The Clerk was just about to proceed to arraign the accused, when a postponement was asked for on the latter's behalf. The application was granted, and there the matter ended for the day. Next morning—Friday, the 11th—the bench was occupied by Justice Willis, who then for the first time in his life presided at an Assize. He had no sooner taken his seat than Collins rose at the bar. "May it please your Lordship," said he, "I have a motion or two to make in Court, if I, not being a lawyer, am in order in so doing."

"Certainly," replied the Judge; "step forward, that the Court may hear you."

Collins then stepped forward, and addressed the Court in a speech which had evidently been prepared for the occasion.* "My Lord," said he, "I am the humble conductor of a public press in this town. I come forward to accuse His Majesty's Attorney-General of vindictiveness and foul partiality in the discharge of his duty as prosecuting officer for the

* So far as mere diction is concerned I have here chiefly followed Collins's own report of this episode, as published in the *Freeman*, but I have also before me the Attorney-General's account, as well as the more elaborate one of Judge Willis himself, and the three do not materially differ in this respect.

Crown. He has sent his nephews and apprentices as spies into my office in order to hunt up imaginary offences. He has preferred bills of indictment against me on supposition of libel, and I have been dragged from my business by a common constable, and obliged to give bail in this Court, while he, the Attorney-General, has allowed the most infamous crimes to pass in review before him, without taking any notice whatever of them." And so on, with much more to the same purport.

The speaker was interrupted by the Attorney-General, who had been conferring with a member of the bar in an adjoining room, but who had been specially summoned into Court by his clerk, Henry Sherwood, who had informed him that Collins was making a long harangue to the Judge. Observing that the Judge showed no disposition to put a stop to the proceedings, Mr. Robinson requested to be informed what was the defendant's object in addressing the Court, and whether he had made any motion. "If Mr. Collins is allowed to proceed," replied Judge Willis, "I dare say his object will appear." Collins accordingly proceeded:—

"My Lord, while I have been dragged into this Court, on the mere suspicion of libel, by His Majesty's Attorney-General, I hold in my hand the printed confession of His Majesty's Solicitor-General, Henry John Boulton Esquire, of a crime that the law of England calls murder, committed ten or eleven years ago.* Yet no indictment has been brought against him, and this confession is attested by James Fitz Gibbon Esquire, a magistrate of this District, and by the Sheriff of this Court. I hold also in my hand the printed history of an outrage of the grossest character, where a number of young official gentlemen in this town assembled together and committed a noonday burglary, by breaking into the private house of William Lyon Mackenzie, and destroying his property. This atrocious outrage, please your Lordship, was proved on the floor of this Court, in the presence of His Majesty's Attorney-General. The perpetrators were identified and sworn to, yet no indictment has ever been brought against them, while the Attorney-General is busying himself in sending spies and informers into my printing office to bring me up for imaginary offences."

**Ante*, p. 13.

The Attorney-General could hardly be expected to sit quietly under such accusations as these, made in open Court, and listened to by the bench without any expression of disapprobation. He rose in some heat, and remarked that he hoped the Court would not allow the public business to be thus interrupted. "The defendant," said he, "is not upon his trial, nor has he ever been arraigned. He seems merely to be indulging himself in an attack upon me as Attorney-General—an attack which could not have any bearing upon his own case, even if it were now before a jury; but which at present is nothing but a most improper interruption of the business of the Court, by an harangue intended to prejudice the public mind before he shall be put upon his trial. As to the matters of which he has spoken, I am not to be called to account by him, or by any other defendant, for the discharge of my official duties with respect to other parties not now before the Court. I am at all times ready to account for my proceedings as Attorney-General to the Government for whom I act, and to whom I am responsible; but I trust that the Court will not suffer a person whom I merely know as defendant upon bills for libels of the most disgraceful kind, and whose arraignment upon these charges has been postponed, as an indulgence, at his own request—I trust that such a person will not be allowed to address the Court in this irregular manner, for the mere object of calumniating me, whose duty it is to conduct the prosecutions against him."

A brief silence followed these words, after which Collins resumed, and was allowed to proceed without further interruption.

"The object of my present motion, then, my Lord, is to compel the Attorney-General to do that duty which he has so long neglected when his own friends were concerned; and as I think his present proceedings against me are both partial and unjust, I shall press the criminal prosecution of his friends, Henry John Boulton Esquire, for murder, and Samuel P. Jarvis and others for riot. In the latter case, please your Lordship, the rioters were sued in a civil action, and damages to a considerable amount recovered from them; yet I feel it my duty to press the criminal prosecution, because James Fitz Gibbon Esquire, a magistrate of this District, begged the amount of the fine from door to door in this town, and the rioters have so far gone wholly unpunished. All I

ask, please your Lordship, is justice and impartiality, and from your Lordship's character I doubt not I shall receive them at your hands."

After a moment's consideration, during which silence reigned supreme in the Court-room, Judge Willis remarked:—"If the Attorney-General has acted as you say, he has very much neglected his duty. Go you before the Grand Jury, and if you meet with any obstruction or difficulty I will see that the Attorney-General affords you every facility."

This was, beyond doubt, very unbecoming language to be used by a Judge under such circumstances. It must be understood that Judge Willis had not properly before him any facts upon which to base his opinion as to the Attorney-General's having neglected his duty. That that official had much to answer for; that his practice had been one-sided and inconsistent; that much of his life had been spent in endeavouring to smother public opinion and to maintain the supremacy of a selfish and corrupt caste—this must be conceded at the bar of history. But no such allegations were before Judge Willis in an official form, and he had no right to assume anything against the Attorney-General in the absence of the most irrefragable evidence. Instead of evidence, he had merely heard the *ex parte* statements of an alleged libeller. This was the legal aspect of the matter, and it is impossible to avoid the conclusion that the Judge permitted himself to be influenced by his personal dislike to Attorney-General Robinson.

The Attorney-General sat for a moment as if thunderstruck. He had so long been accustomed to having his own way in Courts of Justice, and to seeing his opinions deferred to by the bench, that he could scarcely credit what was passing before his eyes. That a Judge should dare to censure him in this irregular way, before the bar and the public, was almost beyond belief. A contemporary account says that he turned to "a rich cream colour."* He was at all events labouring under suppressed rage as he deliberately arose to address the Court. He denied that he had neglected his duty in not preferring indictments against persons in cases where no formal complaint had been laid, and he utterly repudiated the idea that his office imposed upon him the *rôle* of a thief-catcher. "It is not my business," said he, "to play the part of a detec-

* The *Freeman*, April 17th, 1828.

tive, or to hunt about the country for evidence in support of voluntary prosecutions. I have now discharged the duties of a Crown officer for nearly thirteen years, and this is the first time that a failure in my duty has been imputed to me. I have always conceived it to be my duty to take official cognizance of offences against the State. As to other cases, I have been accustomed to proceed only upon informations and complaints placed in my hands by justices of the peace, and upon presentments of Grand Juries. In cases of injuries to individuals and their properties, such as assaults and riots, where a double remedy is afforded by action and indictment, I have not been accustomed to set the law in operation on my own motion."

"That," interrupted Judge Willis, "merely proves that your practice has been uniformly wrong, and I take leave to remark that you have neglected your duty. Why are you placed here, as prosecuting officer? To prevent the violation of the public peace, or, when it has been violated, to punish the offenders, whoever they may be, or whatever may be your private feelings with respect to them. The moment a violation of the public peace was proved before you, as in the case mentioned by Mr. Collins, it was your duty to proceed against the offenders. Do you not consider that the Solicitor-General and yourself have the exclusive right to conduct all criminal prosecutions; or do you admit them to be open to the bar in general, as in England?"

The Attorney-General's feelings were by this time worked up to a tremendous pitch of excitement. To think that a Judge—a junior Judge, who had been only a few months in the country—should presume to lecture him in this manner, and to instruct him in his duties as though he were a petty juryman! "My Lord," he burst forth, in a tone of hot anger, "I know my duty as well as any Judge on the bench. I have always acted in the way I have indicated, in which respect I have followed the practice of all my predecessors in this Province; and I shall continue to act in the same manner as long as I am prosecuting officer for the Crown."

"Then, Sir," retorted Judge Willis, "if you know your duty you have wilfully neglected it; and as you say you will continue to act as you have done hitherto, I shall feel it to be my duty—holding, as I do, His

Majesty's commission on this bench—to make a representation of your conduct to His Majesty's Government."

This far from edifying scene was without precedent in the annals of Upper Canadian courts of justice, and was for some days the talk of the town, more especially among the members of the legal profession. The bar generally sided with the Attorney-General, and were loud in their aspersions upon Judge Willis. Some of the leading members, however, among whom were Rolph, Bidwell and the two Baldwins, took a different view, so far, at least, as the legal aspect of the dispute was concerned. As for public opinion generally, it was largely in favour of Judge Willis. On Monday, the 14th, before the public pulse had had time to cool, there was a scarcely less notable interchange of asperities between the same personages. The Attorney-General, in a criminal case in which he was officially concerned, took occasion to reiterate, in effect, the views to which he had given expression on the previous Thursday as to the duties of a Crown prosecutor. When he had finished his remarks Judge Willis expressed himself to the same effect as before. "The practice in this country," said the Judge, "as stated by the Attorney-General, does not agree with my notions as to the duty of that officer, and I have laid a statement of the question before His Majesty's Government here for the purpose of having it transmitted to England, where it will be decided how far the Attorney-General is right in expressing his sentiments as he has done." Mr. Robinson hereupon remarked that he was Attorney-General to His Majesty, and not to Judge Willis, and that he would act as he believed to be right, even though he should differ in opinion from his Lordship.

Justice Willis.—Mr. Attorney-General, I am one of His Majesty's Judges in this Province. As such, it is my place to state to the Crown officers what their duties are, and it is for them to perform those duties according to direction. If the interests of the Crown had not been concerned I would not have permitted any discussion on the question. But I am sure His Majesty's Government will protect me from insult in the exercise of my judicial functions, and in stating to any public officer what I conceive to be his duties.

Attorney-General Robinson.—And will also protect His Majesty's officers in the execution of their duty.

Justice Willis.—Mr. Attorney-General, I beg that you will not reply to the bench in that manner.

The unseemliness of thus discussing, in open Court, how far the Attorney-General had proved to be an effective public servant, must be apparent to everybody. And it must be admitted that the discussion was provoked by Justice Willis, who had made something very like an attack upon the Attorney-General—an attack based upon the unsworn statements of an indicted libeller. He had moreover permitted Collins to go a most unwarrantable length in his onslaught upon the Crown prosecutor, more especially as no affidavits had been produced in support of the motion. A layman who comes before the Courts *inops consilii* is allowed more latitude in the conduct of his case than is generally conceded to a counsel whose professional business it is to plead at the bar; but the latitude permitted in the case under consideration was beyond all legitimate bounds. The Judge's dislike to the Attorney-General seems to have predisposed him to believe that all Collins's allegations were true. In reality they were exaggerated presentations of notorious facts. That they were largely founded upon facts Judge Willis probably knew from common hearsay. But while sitting on the bench he had nothing to do with common hearsay. *A fortiori*, he was not justified, upon the mere assumption of a hypothetical case,* in admonishing the Attorney-General in the presence of his accuser, and in humiliating him in the presence of the bar of which he was the rightful head. An English judge would be considered as departing widely beyond the sphere of his duty if he were thus openly to arraign the conduct of the Attorney-General, especially in a matter clearly lying, as in the case under consideration, within that officer's discretion. English judges, on the contrary, are much more likely to interpose on behalf of the officers of the Crown, and to prevent their acts and motives from being called in question in open Court by persons against whom proceedings have been instituted by them. Judge Willis seems to have been wrong in his law, wrong in his etiquette, wrong in his temper, and wrong in his construction of judicial amenities.

Henceforth the Judge's "amoval" was only a matter of time, for the

*The case, as put by the Judge, was purely hypothetical. "*If* the Attorney-General has acted so and so, he has neglected his duty." See *ante*, p. 174.

entire influence of the Executive, direct and indirect, was arrayed against him. From the Lieutenant-Governor down to the most insignificant clerk in the departments there arose a howl of indignation against the man who had dared to set up his wife in opposition to Lady Sarah Maitland; who had dissented from the judgments of Chief Justice Campbell and Mr. Sherwood, and sneered at their legal acumen; who consorted with the leading members of the Opposition; who had even gone the inconceivable length of berating Attorney-General Robinson for neglecting his duty. Such a man was not to be tolerated. He must surely be a Radical, who had got himself sent over to this colony in order that he might stir up dissatisfaction among the people. To go over all the interminable squabbles which took place between Judge Willis, on the one hand, and the various judicial and official dignitaries on the other, would be alike wearisome and profitless. Judge Willis availed himself of every opportunity which presented itself for officially and publicly animadverting upon the conduct of those who were opposed to him. He added to his enormities by announcing, through the newspapers, that he was preparing for publication a work on Upper Canadian jurisprudence, and it appeared that the title-page was to bear the deprecatory motto *Meliora sperans.** *Meliora sperans*, indeed! What manner of personage was this outsider, who arrogated to himself the responsibility of ameliorating the rigours of Upper Canadian laws?† It was not long before an opposition announcement appeared, being an exact counterpart of the other, except that the motto was *Deteriora timens*. The authorship of the latter, whether rightly or wrongly, was very generally attributed to Attorney-General Robinson. Judge Willis's announcement gave great offence to the official guardians of the law, from the highest to the lowest. The motto, which in reality had been adopted by him prior

*The announcement ran as follows:—"Preparing for publication.—A View of the Present System of Jurisprudence in Upper Canada; by an English Barrister, now one of His Majesty's Judges in this Province.—*Meliora sperans.*"

†It was time for some one to undertake the duty of ameliorating the criminal law of Upper Canada, which was that of England as it stood on the 17th of September, 1792, except in so far as it had been altered by subsequent legislation. At the Assizes for the Home District, held at York in the autumn of 1827, within a few weeks after Judge Willis's arrival in the Province, a boy was capitally convicted and sentenced to death for killing a cow.

to his coming to Canada, was believed to have been specially assumed for the occasion, and was regarded as a covert sneer at existing institutions in the Province. As a consequence, it was taken as additional evidence of disrespect. Owing to the Judge's "amoval" the projected treatise was never issued, though several chapters of it had actually been written. A small portion of it was incorporated in a work published by the author in England twenty-two years afterwards.*

In an elaborately-worded despatch to the Colonial Secretary, dated the 6th of June, 1828, Sir Peregrine Maitland called the attention of that official to Judge Willis's announcement and the accompanying motto, which he declared to be, in his opinion, neither discreet nor delicate, as emanating from a Judge upon the bench, who had been but a few months in the Province. The laws of Upper Canada, in Sir Peregrine's estimation, were highly satisfactory, and needed nothing so much as to be let alone. "I have been ten years in this government," he wrote, "and as I have never received any representation against the laws, or the manner in which they have been administered, I must conclude that the people are content with both." Content with laws which prescribed capital punishment for the killing of a cow! Content with laws which had been conceived in an iron age, and under a state of society which was now happily passing away! Content with the laws! When a majority of the population, through their representatives in the Assembly, had for years been using their utmost endeavours to procure the repeal of the Sedition Act of 1804! When a Select Committee of the British House of Commons had directed the attention of Government to this mediævally-conceived statute, and had expressly recommended its repeal! Content with the manner in which the laws had been administered, when the trial of Robert Gourlay was yet fresh in the public memory! When a score of almost equally vile but less conspicuous perversions of justice were matters of yesterday! When no obscure litigant could sue a member of the Family Compact with any assurance of obtaining his rights! When the Reform newspapers had for years been filled to overflowing with complaints about the imperfect administration of justice! When a very

* *On the Government of the British Colonies.* London, 1850.

strongly-worded complaint of neglect in the administration of justice had only a few weeks before been made in open court to Judge Willis when he first took his seat in a Court of Assize! When a large proportion of the population had ceased to have any confidence in the integrity of the judiciary! When this want of confidence was shared by several leaders of the Provincial bar, who certainly had exceptional opportunities for forming a correct opinion on the subject! The time was not far distant when one of the most eminent and successful lawyers in the country was to abandon his profession, owing to this very want of confidence. Truly, a wonderful manifestation of content with the laws and the manner in which they were administered. Sir Peregrine thought and acted as other opponents of reform have acted from time immemorial. He refused to believe in the existence of discontent which he did not share. He refused to believe that he himself was not an object of adoration to the great body of the people, because the official lickspittles by whom he was surrounded vied with each other in flattering his imbecile vanity. Had he been left to his own devices he would have been like the doomed king who refused to believe that his people were hungry until thirty thousand starving *sans-culottes* were thundering at his palace gates.

It soon became generally known throughout the country that strained relations existed between Judge Willis and the whole race of officialdom at the capital. The new Judge was known to have given expression to a desire for a reform of the law; and it was commonly assumed that it was to his liberal ideas that he was indebted for the hostility with which he was regarded by the ruling faction. The Reform Party warmly espoused his cause, and their organs devoted much space to extolling his wisdom, moderation and other high qualities. Addresses to him were circulated throughout some of the rural constituencies, and there was a manifest disposition to cater for his favour and patronage. Had he been endowed with discretion and good judgment he might, without any dereliction from his judicial duty or integrity, have rendered incalculable service to the cause of freedom and good government. Doubtless the rendering of such service would sooner or later have involved him in complications with the official party, but if he had kept his head it is doubtful if they could have prevailed against him. Unfortunately he proved to be too weak

for his position, and allowed himself to be completely out-manœuvred. He ruined himself, without accomplishing anything for the cause which he wished to serve. The time was rapidly drawing near when, by means of a judicial decision, he was to shut the door forever upon any prospect of his advancement in this country, and when he was to be made the subject of official communications resulting in his permanent removal therefrom.

As has already been mentioned, there had been frequent differences of opinion between Mr. Willis and his colleagues, almost from the beginning of the former's assumption of judicial functions. The acting justices of the Court of King's Bench were at that time three in number, and consisted of the Hon. William Campbell, Chief Justice, the Hon. Levius Peters Sherwood, senior puisne judge, and Mr. Justice Willis himself. During the first Term which ensued after Mr. Willis's arrival in this country—which was Michaelmas Term, 1827—he had occupied the bench along with the other two judges. In Hilary Term of 1828 the Court had been presided over by the same three judges, except that Chief Justice Campbell had occasionally been absent from his seat in consequence of infirm health. Immediately after the close of the last-named Term the Chief Justice, having obtained from the Lieutenant-Governor six months' leave of absence, departed for England, whence he did not return until after a long holiday. The Court of King's Bench was thus left with only the two puisne judges, who accordingly presided by themselves during the following Easter Term. They had by this time come to dislike each other most cordially, insomuch that it taxed their powers to the utmost to treat each other with becoming respect. Sometimes the effort was beyond their power, and they snapped and snarled at one another upon the bench like two querulous old women. They now differed in opinion upon almost every case which came before them, and it is impossible to doubt that their differences were in large measure due to their personal hostility. This was a serious matter, for, as no third judge was at hand to give the preponderance of authority to either side, there was a practical dead-lock in much of the business of the Court. Suitors were put to serious delay, inconvenience, and consequent expense. Counsel were profoundly disgusted, and of course took sides for and

against. Judge Willis was so sensible of the deplorable consequences of such a state of things that, as soon as Term was over, he entered into a minute and searching investigation of the constitution and power of the Court of King's Bench as established in Upper Canada.* He was desirous of finding some way out of the difficulty, or at all events of knowing precisely upon what ground he stood. But a still more serious evil soon began to loom up before his mind, for the result of his investigations was a conviction that the Court could not legally sit in Term, unless the full court—*i.e.*, the Chief Justice and the two puisne Justices—were present.

This conviction was a momentous one, for, if sustained, it would nullify much that had been done in the Court ever since its establishment in 1794. The frequent practice had been for two Judges, and sometimes even for only one, to sit during Term; and, as has been seen, Judge Willis himself had so far acquiesced in this practice as to sit during a part of the preceding Hilary Term, and during the whole of Easter Term, with Justice Sherwood as his only colleague. He had however assumed the prevailing practice to be justified by the constitution of the Court, and had not examined the matter on his own account until impelled to do so by the reasons already indicated. He now discovered, as he believed, that the practice was altogether unwarranted, and that all that had been done under it was liable to be upset. The first section of the Provincial Statute under which the Court had been created† enacted that "His Majesty's Chief Justice, together with two puisne justices," should preside therein. All the subsequent sections except those relating to appeals had been repealed by a later Provincial Act,‡ and although power was given to the senior puisne Judge, in the absence of the Chief Justice, to *teste* the process, and to *any* of the Judges to

*The investigation, according to Judge Willis's own testimony, was entered into partly in consequence of a suggestion which he received on the subject. See the text of his written opinion, embodied in pp. 66—74 of the Imperial blue book issued in 1829, entitled "Papers relating to the Removal of the Honourable John Walpole Willis from the Office of One of His Majesty's Judges of the Court of King's Bench of Upper Canada." It seems probable that the suggestion emanated from Dr. Baldwin.

†34 Geo. III., c. 2. This statute was framed by the Hon. William Osgoode, first Chief Justice of Upper Canada, a gentleman of great learning, who had been sent out from England for the express purpose of organizing the Courts of the Province.

‡2 Geo. IV., c. 1.

sit at *Nisi Prius*, there was no authority to sit *in Banco*, unless the Court were full. Having arrived at a conclusion on the subject, Judge Willis at once communicated the fact to the Colonial Secretary, the communication being made by letter, forwarded through the Lieutenant-Governor, and left purposely unsealed in order that that dignitary might possess himself of the contents, to which his attention was specially called by a separate note. Sir Peregrine could not refuse to transmit the Judge's missive, but he took good care to malign him in an accompanying despatch. "It is with pain," he wrote, "I am compelled to observe that, having presided as a Judge for the first two terms after his arrival, without finding more occasion than all the respectable Judges who have preceded him to make the administration of justice subservient to popular excitement, Mr. Willis has been either unable or unwilling within the last few months to avoid making his proceedings, either in the Civil or Criminal Court, the prominent subject of political discussion, and the pretence of attacks *from the vilest quarters*, and of the grossest kind, upon those who were associated with him in the administration of justice, and of whom I shall speak only justly when I say that the measure of respect and esteem in which their public conduct has ever hitherto been held, and is now held, by their Government, and by every person except by Mr. Willis, and by a party with whom I have lamented to find him associate himself, and *who are not very respectable in any sense*, is not to be attained but by a long period of correct and honourable service." The italics are not Sir Peregrine's, but they are deserving of all the emphasis which distinguishing type can give them, as exemplifying the way in which the representative of Majesty in those days was not ashamed to secretly vilify persons who opposed his policy: persons who, whether contemplated from a moral or an intellectual point of view, were elevated so far above him that it is impossible to institute any comparison between them. Will it be believed that the gentlemen who were "not very respectable in any sense" were John Rolph, Marshall Spring Bidwell, Dr. William Warren Baldwin, and Robert Baldwin? Was it not an honour to be disreputable in such company? Some of these, at least, were men whom no pressure of outward circumstances could have induced to stab their bitterest foe in the dark, as this eminently respectable vice-regal assassin

was in the frequent habit of doing in his despatches, and as he did when he wrote the mendacious words above quoted. Judge Willis doubtless associated with these men because he found them more to his taste than anyone else with whom he became acquainted in York. And his doing so was made much more of than the facts warranted. His acquaintance with the persons named was not of such a nature as to be called intimate. In his "Narrative," already quoted from, he has recorded that to the best of his recollection he never conversed with Dr. Baldwin, Mr. Rolph, Mr. Bidwell, "or any other person politically opposed to Mr. Robinson" a dozen times in the course of his life; and in a separate defence of his conduct written at Bath in December, 1828, he says: "From what I know of Dr. Baldwin and his family, I must always sincerely regret that I have not known more." *

Having arrived at such a decision as to the constitution of the Court, and having apprised the Colonial Secretary thereof, he took the earliest feasible opportunity of making it known to the Provincial bar. At ten o'clock in the forenoon of the opening day of Trinity Term—which was Monday, the 16th of June—he repaired to the Court House at York. While robing himself in the Judge's chamber he was joined by his colleague, Justice Sherwood, and a few moments afterward they both proceeded to the Court room, attended by the Sheriff in the usual manner. The Court having been formally opened, Judge Willis arose and addressed the audience, standing all the while, after the manner of a counsel at the bar. In the course of his remarks, which occupied nearly an hour in delivery, he expressed himself in very positive terms as to the constitution of the Court. He declared it to be his decided opinion that the Court could not be legally held without the presence of the Chief Justice and two puisne Judges; that everything which had theretofore been done in the Court by two Judges only was null and void; that the Lieutenant-Governor had no authority to grant leave of absence to a Judge without the express approbation of the Executive Council; that he (Judge Willis) had made enquiry at the office of the Executive Council, and had found that leave had always been granted by

* See pp. 249—267 of the Imperial Government's blue book on the subject, *ubi supra*.

the Lieutenant-Governor alone, in pursuance of which leave Chief Justice Campbell was now absent from the Province. The manner in which the leave of absence to the Chief Justice, as well as to many other persons holding situations under the Provincial Government, had been granted by the Lieutenant-Governor, was pronounced to be, in Judge Willis's opinion, not only irregular but illegal, whereby the incumbents had forfeited their several offices. During the preceding Term an order of the Court had been passed by Judge Sherwood and himself. That order he now rescinded, so far as his authority was concerned, and he expressed his regret that he had entered upon the discharge of his judicial functions without having previously acquainted himself with the state of the law. He added that he had felt it to be his imperative duty to declare his opinion as to the incapacity of the Court to legally proceed with the business before it; and that, holding that opinion, he had resolved to decline to sit any longer upon the bench, though he would remain at hand to attend to any functions which he could legally discharge.

This extraordinary address, it may be presumed, was not altogether a surprise to Justice Sherwood, as Justice Willis had previously notified the Lieutenant-Governor of his intention to give currency to his views at the commencement of Term, and Sir Peregrine would be certain to discuss the matter with the Attorney-General, through which medium the facts would be tolerably sure to find their way to Justice Sherwood. The latter seemed to take the matter very coolly. He informed the bar that he would not take upon himself to pronounce an opinion on the subject of the constitution of the Court, as there was nothing before him which rendered it necessary for him to do so. He added that he would adhere to the practice which had uniformly prevailed, and that he would not hesitate to proceed with the ordinary business of the Court, adjourning it from day to day as occasion required. Judge Willis, still standing, then said: "You cannot adjourn a Court that does not exist. The Court is not legally constituted. Its functions cannot be exercised, and any proceedings you may take will be void." "I am aware," replied Mr. Sherwood, "that such is your opinion; but I have a right to mine, and I shall pursue the course I have indicated. If that course, notwithstanding the practice which has hitherto prevailed, should prove to be

wrong, I shall extremely regret it; but I feel it to be a matter of too much importance to the business of the country to take upon myself to vary from it, without the interference of a higher authority." Judge Willis then briefly repeated his protest, and retired from the bench. His colleague, after transacting some unimportant routine business, adjourned the Court until the following day. Throughout the rest of the Term he was the sole occupant of the Bench.

Judge Willis's conduct on this occasion does not admit of much diversity of opinion. For one thing, as was subsequently decided by the Privy Council, he was wrong in his view of the law. This is of itself an important consideration. But even if his view had been a sound one, admitting of no doubt, he incurred a very serious responsibility in giving currency to it at such a time, and in such a manner. His conduct was certain to produce great excitement and disturbance in the public mind. It was certain to create an increased distrust of long-settled institutions, which it was highly essential for the well-being of society that the public should regard with confidence and respect. Besides, the rendering of the past and present proceedings of the Court liable to doubt and uncertainty could not fail to seriously affect the business interests of the country. If the practice of the Court had been wrong, and if many of its proceedings were invalid, the wisest course would have been to quietly take steps to bring about remedial legislation, whereby all defects might have been cured, without the serious risk of reviving old animosities and long-settled disputes. But such a course as Judge Willis saw fit to adopt was wholly uncalled for, no plea to the jurisdiction having been pleaded in any case before the Court. It was certain to produce ill, without any possibility of good. He moreover placed in the hands of the Executive a rod for his own back—an implement of which they speedily availed themselves to inflict grievous punishment.

On the following day, which was Thursday, the 17th, Judge Willis formally notified the Lieutenant-Governor of the public delivery of his opinion, adding that he was nevertheless most desirous of discharging such duties as he could legally perform consistently with his view of the law. Judge Sherwood meanwhile continued to sit on the

bench alone, and to transact such business as came before him. Some influential members of the bar found themselves in a quandary. After Judge Willis's decision, they entertained grave doubts as to the legality of the Court, and hesitated as to the advisability of taking any further proceedings in cases committed to them, until the vexed question should be settled. Judge Sherwood, though he had dissented from his colleague's view, and though he plainly testified by his persisting in sitting and holding Court that he still continued to dissent, had not given any formal judgment, nor had he even verbally stated any grounds for his opinion. With a view to obtaining light for their guidance in this perplexing emergency, Dr. Baldwin, his son Robert, and Mr. Simon Washburn, another prominent member of the bar, addressed a written application to the Court, in the person of Justice Sherwood, requesting to be favoured with his opinion on the matter. The application was made on Thursday, the 17th, and replied to by Mr. Sherwood in writing next day. The phraseology of the reply made it quite clear that the Judge felt by no means strong in his position. "You are desirous," he wrote, "that I should express an opinion from the bench on the present state of this Court, but it appears to me any opinion of that sort would be extra-judicial. No one but His Majesty's Representative has any right to ask for the opinion of a Judge where no cause or regular motion, according to the practice of the Court, is pending before him." There was more to the same no-purport. It was clear that the applicants were not to receive much assistance from Justice Sherwood in resolving their doubts. The Judge's response was no sooner communicated from the bench than the two Baldwins and Mr. Rolph then and there threw off their gowns and left the Court, declaring that they concurred in opinion with Judge Willis, and that they could not continue to transact business in a Court which they believed to be illegally constituted.

The emergency brought about by Judge Willis's decision, and by his consequent withdrawal from the bench, was one for which the Executive deemed it essential to provide without unnecessary delay. It was manifestly impossible that matters should remain *in statu quo*. The time for holding the annual circuits was approaching. Mr. Sherwood was the only Judge remaining on the bench, and a Court composed of a single Judge is not a

satisfactory tribunal for all purposes of justice. The Council took the opinions of the law officers of the Crown as to the soundness of the Judge's views with respect to the constitutionality of the Court of King's Bench. Those opinions were in direct opposition to the conclusion at which Judge Willis had arrived. The Attorney-General's was a remarkably exhaustive and lucid exposition of the law bearing upon the question. It was also free from ambiguity, and left little room for doubt. These opinions were strengthened by that of Justice Sherwood, who, at the request of the Executive, also prepared an elaborate paper on the subject, in which he expressed precisely similar views to those enunciated by the Attorney-General. The question was then submitted to the Crown officers whether the Lieutenant-Governor could legally remove Judge Willis from office and appoint a successor. The answer prepared by the Attorney-General, and signed both by him and Solicitor-General Boulton, came with remarkable promptitude. "Upon the points submitted to us," it ran, "we are of opinion, 1st: That the power to remove an officer depends on the tenure of his office. In this, as in other colonies, the appointment of a Judge is during pleasure; and we conceive that in law any person holding an office on such a tenure is removable at pleasure: that is, at the pleasure of the Lieutenant-Governor, acting in the name and on behalf of the King. The reasons for such removal are to be rendered to His Majesty by the Lieutenant-Governor, who is responsible for their sufficiency. . . 2nd: We are of opinion that a removal of a Judge of the Court of King's Bench necessarily vacates the office, and that another person may be appointed to fill the vacancy, subject to be confirmed or disallowed by His Majesty."

The Executive acted with great circumspection. Fortified as they were by these strongly-worded opinions, and assured as they felt of the legality of their contemplated proceedings, they did not permit themselves to be betrayed into indiscretion. On the 25th of the month they addressed a letter to Judge Willis, referring to his communication to the Lieutenant-Governor on the 17th, in which he had professed willingness to discharge such duties as he could legally perform. He was asked what explanation he had to offer, and what duties he was prepared to undertake. On the 26th he replied that he did not feel at liberty to pronounce an extra-

judicial opinion, and that he could only define the precise nature of his duties when the matter should come judicially before him. The Executive thereupon pronounced his doom, and a writ was issued whereby he was removed from office until His Majesty's pleasure should be known. The Lieutenant-Governor, through his Secretary, notified him that the Council had felt it incumbent upon them to advise this step.* The "amoval" was now an accomplished fact. A vacancy was thus created on the bench, which was filled on the 2nd of July by the appointment of Christopher Alexander Hagerman to a puisne judgeship.

The news of Judge Willis's "amoval" spread rapidly through the Province, and produced widespread excitement. The circumstance that his course had met with the approval of Rolph and the Baldwins led to the belief among non-professional people that he was sound on the legal question, and that he had been driven from the bench because he would not stoop to corruption. The case of Judge Thorpe was exhumed from the dust of twenty years, and the amoval of Judge Willis was believed to be a mere re-enactment of that unforgotten iniquity. As for Judge Willis himself, he determined to proceed at once to England to present his side of his case, in the form of an appeal from the order of amotion, at the Colonial Office. Before his departure he received addresses of condolence from various parts of the Province. Numerously-signed petitions in his favour were transmitted to the king, and to the several other branches of the Imperial and Provincial Legislatures. A long requisition from a number of influential persons in the County of Lincoln entreated him to represent their constituency in the Assembly. People who were usually sensible appear to have lost their heads for a time during this exciting period. A large meeting of the Judge's sympathizers was held in Toronto, at which Dr. Baldwin and Mr. John Galt,† with their wives, were appointed a Committee to watch over the interests and

* The notification was dated the 26th of June, whereas the formal document issued by the Council was not signed until the 27th. Mr. Willis attached a good deal of weight to this irregularity, which however was of less importance than might at first sight be supposed. The Council had fully made up their minds on the 26th, and the notification was despatched accordingly, though the order of amotion was not actually ready for signature until the day following.

† The well-known author, who was then in Canada as representative of the Canada Land Company.

insure the protection of Lady Mary and her family during the absence of her lord; and Robert Baldwin was added to the Committee as her Ladyship's solicitor.

Judge Willis took his departure from York on the 11th of July. As he expected that he would very soon be able to procure from the Colonial Office a reversal of his "amoval," and that he would be reinstated in his judgeship, to the great discomfiture of the Lieutenant-Governor and his satellites, he did not think it necessary that his family should accompany him to England. The suitable disposal of the members of his household was an embarrassing problem for him. In good sooth, he was in a situation somewhat analogous to the man in the familar old story, who came to the bank of a wide stream, having in his possession a fox, a goose, and a bag of corn. The application is easy. Mrs. Willis and Lady Mary could by no means be left to keep house together unless the head of the establishment was near at hand to keep the peace between them. The relations between Lady Mary and Miss Willis, though far from amicable, were somewhat less strained. Mr. Willis accordingly took with him his mother only, leaving his wife, child and sister behind him; though it is to be presumed that the abovementioned Committee had a sinecure, so far as any special attendance upon or protection over Lady Mary was concerned.

A series of acrimonious despatches from the Lieutenant-Governor preceded Mr. Willis across the Atlantic. For weeks—probably for months—before the delivery of his unfortunate decision, the espionage system had been put in full operation against him, and measures had been taken to watch his personal habits and pastimes. There had been a firm determination to effect his ruin,* and the strong suspicion that such was the case had done much to array a majority of the inhabitants on his side. "It is my duty to state to you in the most decided terms," wrote Sir Peregrine Maitland to the Colonial Secretary, on the 6th of July, "that his [Mr. Willis's] restitution to office, while it would be received by the most portion of the population as a triumph over the Government which Mr. Willis has ungratefully and wantonly insulted, would be most pernicious to the peace of this colony, and an act of the

* "Cabot," in *Blackwood's Magazine* for September, 1829.

most aggravating injustice to those faithful servants of the Crown against whom he has, for unworthy purposes, dishonourably laboured to excite the prejudice and hatred of the ignorant and malicious." It is worth while to note that this extract contains a clear admission by the Lieutenant-Governor that his Government was regarded with disfavour by "the most portion of the population:" an admission directly at variance with many statements made by him in former despatches, as well as in speeches to the Provincial Parliament.

Upon reaching England Mr. Willis put himself into immediate communication with the Colonial Office. He took up his quarters at the house of his brother, the Reverend W. D. Willis, at Bath. There he prepared an elaborate statement of his case, which was duly forwarded to the Colonial Secretary. After some delay he succeeded in obtaining copies of the several despatches of Sir Peregrine Maitland in which the charges against him were formulated with wearisome reiteration. These indictments against him, which, though signed by Sir Peregrine, were doubtless in reality prepared by Mr. Willis's arch-enemy, Attorney-General Robinson, were certainly of the most formidable character. They went over the whole course of the Judge's procedure, from the time of his arrival in the Province down to his departure therefrom. To the serious grounds of complaint which had unquestionably been given were added numerous delinquencies of the most petty and trifling nature. It was stigmatized as "a great indecency" that Judge Willis had been seen in a dress "but little according with his situation."* In view of the interests involved, and of the grave nature of the questions to be decided, it seems ludicrous that the appellant should have been called upon to reply to an accusation of this nature.† A perusal of these despatches,

* See despatch marked "Separate," from Major-General Sir Peregrine Maitland to Mr. Secretary Huskisson, dated 6th July, 1828.

† His reply will be matter of surprise to the staid and decorously-attired judges of the present day. "On all ordinary occasions," he wrote, "I usually wore a *black velvet coat and waistcoat*. The first time I saw the Chief Justice he had on a black kalimanco or camlet jacket, which I have seen him wear even on the bench. I have met the Lieutenant-Governor frequently walking through the streets with an olive-coloured square-cut velveteen jacket and waistcoat; and a few days before I left York I beheld Mr. Justice Sherwood in a grass-green cloth jacket with white metal buttons. I merely mention these 'extravagancies' to show that my dress was neither improper nor extraordinary."—See the *Narrative*, ubi supra.

however, rendered necessary a supplementary statement and narrative, wherein every count in the indictment was either traversed, or, in legal parlance, confessed and avoided. But Mr. Willis soon found that he was not to gain so easy a triumph over his enemies as he had previously allowed himself to suppose would be the case. The question to be decided was a purely technical one, and after the matter had been for some time under consideration at the Colonial Office it was referred for decision to the Privy Council, where it was not disposed of for nearly a year. The conclusion finally arrived at was that Mr. Willis had been wrong in his view of the question in dispute, and that the Executive Council, in amoving him from office, had not acted in excess of their authority. Under such circumstances his return to Upper Canada was of course out of the question; but as his conduct was attributed to error of judgment rather than to any serious dereliction from duty, he received an appointment to a judgeship in the South American colony of Demerara.

From all the circumstances, then, it is clear that Judge Willis, though he was in some sense a victim of Executive intolerance in Upper Canada, was himself largely to blame for his downfall, to which he contributed by his want of caution and calm good sense. But many of the circumstances detailed in the present chapter were unknown to the bulk of the Canadian people, by whom he was regarded as a martyr to his upright and liberal principles His amoval produced a wider excitement than any event since Gourlay's time. It tended greatly to embitter public opinion, and was unquestionably a strong factor in producing the discontent which ultimately found expression in open rebellion. For this reason it has been thought desirable to go somewhat minutely into details which are in themselves fraught with instruction, and as to which the people of Canada, even at the present day, are very inadequately informed.

Mr. Willis felt his defeat very keenly, more especially as he had confidently looked forward to a successful termination of his appeal. At his instigation the subject was brought before the attention of the House of Commons by Lord Milton, on Tuesday, the 11th day of May, 1830.* Sir George's Murray's explanation, which involved a narrative of the circum-

* See Hansard's *Parliamentary Debates*, N. S., Vol. xxiv., 551—555.

stances in detail, proved satisfactory to the House, and the matter was allowed to drop. But the amoved Judge was fated to have greater reasons still for deploring that he had ever taken up his abode in Canada, as his residence there led to the rupture of his family ties and the total wreck of his domestic happiness. It will be remembered that Lady Mary and her child, together with Miss Willis, had remained at York. Upon learning the decision of the Privy Council in his case, Mr. Willis wrote to his wife and sister, requesting them to dispose of his house there, and to return home as speedily as possible. During the long interval which had elapsed since the ex-Judge's departure for England, the two ladies had been left to amuse themselves as best they could in the little capital. They occasionally went into society, and received a certain amount of attention from that portion of it which had been favourable to Judge Willis, as well as from some of the military officers stationed there. Among others whose acquaintance they formed was a certain Lieutenant Bernard, an officer of the 68th Light Infantry, whose regiment was then in Canada. He occasionally rode out with Miss Willis, who was an accomplished equestrienne, but he did not appear to be on specially intimate terms with Lady Mary. On the 16th of May, 1829, Lady Mary set out for England by way of Montreal, Miss Willis remaining behind for a week to make a final disposition of the house. On reaching Kingston, Lady Mary was met by Lieutenant Bernard, who accompanied her to Montreal, whence the pair several months afterwards fled together to England, Lady Mary leaving her child behind her in the care of one of her maids. Mr. Willis brought an action against Bernard, who had by that time succeeded to a Captaincy. The case was tried in the Court of Common Pleas at Westminster on Thursday, the 9th of February, 1832, when the plaintiff recovered £1000 by way of damages. A report of the proceedings will be found in *The Times* of the following day.*

1829.

1832.

It may be of interest to Canadian readers to learn that Mr. Willis was some years afterwards appointed to a seat on the bench of the Supreme Court of New South Wales. On the 8th of February, 1841, he was under a local statute appointed resident Judge for the District of Port Philip. While officiating in that capacity he came into conflict

* Some further particulars may be found in 8 Bingham, 376; also in 5 C. & P., 342.

with Sir George Gipps, Governor of the Colony, and the Executive Council, by whom he was once more "amoved" from office. The order of amotion, which was made on the 17th of June, 1843, was however reversed by the Imperial Privy Council for irregularity. The Lords of the Judicial Committee, before whom the case was heard in June and July, 1846, reported that in their opinion the Governor-in-Council had power in law to amove Mr. Willis, and that the facts were sufficient to justify his amoval, but that an opportunity ought to have been afforded him of being previously heard. The requisite notice not having been given, the omission was held to vacate the order of amotion, and judgment was rendered accordingly.*

* See the case of John Walpole Willis, Appellant, *versus* Sir George Gipps, Knt., Respondent, 5 Moore's Reports of Privy Council Cases, 379. From an *obiter dictum* of one of the judges in the case it would appear that the order of amotion from the bench of this Province was finally set aside on technical grounds, owing to the appellant's not having been heard in Canada. After diligent search, I have been unable to find any report of this decision, either in the official reports of the Privy Council or in any of the newspapers or periodicals of the time.

CHAPTER IX.

THE CASE OF FRANCIS COLLINS.

IN the foregoing pages mention has several times been made of Francis Collins, editor, proprietor and publisher of *The Canadian Freeman*, a Radical weekly newspaper issued at York. Mr. Collins was an enthusiastic young Irish Roman Catholic, who had immigrated to Canada a short time before the excitement arising out of the Gourlay persecution reached its height, and when he himself was barely twenty years of age. He was a printer by trade, and for some time after his arrival worked as a compositor in the office of *The Upper Canada Gazette*, published at York by the King's Printer, Dr. Robert Charles Horne. Finding that he possessed much intelligence and a fair education, his employer deputed him to report the debates in the Assembly during the sessions of Parliament. In 1821 he reported certain proceedings which the Government were annoyed at seeing in print, more especially as the version given was not strictly accurate. For this offence Dr. Horne was summoned to the bar of the House, where he sought to evade responsibility by pleading that the debates had not been reported by himself, but by Francis Collins. The Doctor further offered a humble apology, and was glad to escape with a sharp reprimand, accompanied by a caution from the Speaker that he would thereafter be held responsible for the reports in the *Gazette*.*

*The Attorney-General, John Beverley Robinson, was ever valiant on the stronger side. He tried to induce the Assembly to compel Dr. Horne to insert in the next issue of the *Gazette* a paragraph in the following words: "From the incompetence or negligence of our reporter, the debates of the House of Assembly inserted in the last number of this paper were so imperfect and so untruly reported that no dependence can be placed in their accuracy." The Assembly, however, were satisfied with the humiliation to which the Doctor had been subjected, and would not compel him to further self-abasement.

Within a short time after receiving this admonition Dr. Horne ceased to be King's Printer, whereby the post became vacant. As Collins was familiar with the nature of the work, and was naturally desirous of bettering his condition, he applied for the appointment. The office was at the disposal of the Lieutenant-Governor, and was held entirely at his pleasure. Collins was curtly checked for his presumption by a leading official, who informed him that the office would be conferred upon "no one but a gentleman." It would be interesting to know whence the official who was guilty of this wanton insult had derived his ideas of courtesy and good breeding. If his statement were to be credited, any application on his part for the post of King's Printer would most assuredly have been made in vain. The appointment was given to Mr. Charles Fothergill, who belonged to a good Yorkshire family, and was therefore fully entitled to rank as a gentleman.*

Collins was excusably indignant at the gross insult which had been hurled at him. He considered himself as at least the social equal of any member of the Government, for he claimed descent from the old Irish kings, and on one or two occasions when more than ordinarily exhilarated he had even been known to refer to his ancestor, Brian Boru. Yet, for all this mendacious and vainglorious boasting, Collins was a man of unquestionable ability, and when fully aroused could write a paragraph well calculated to make the ears of his enemies to tingle. His nationality was clearly indicated by his personal appearance, his features being rough-hewn and unmistakably Celtic; while his red hair and beard, usually not very well cared for, gave him an aspect of uncouth wildness. Up to this time he had not taken any very conspicuous part in politics since his arrival in Canada; but henceforward the Executive had

*Mr. Fothergill held the office barely three years, when he was dismissed for voting with the Opposition in the Assembly against the Government. It was an anomaly to permit the King's Printer to hold a seat in the Legislative Assembly, and the Government could hardly be expected to tolerate opposition from such a quarter. Mr. Fothergill was the first incumbent of the office to develop liberal opinions. He was sufficiently deep in the secrets of the Administration to make him a dangerous opponent if he had felt disposed to wage war to the knife. Of this fact the Administration seem to have taken a sort of oblique cognizance. He had overdrawn his account by £360, and in settling with him this sum was not taken into consideration. In other words, the Government made him a present of £360. His successor in the office of King's Printer was Mr. Robert Stanton.

no more bitter or sleepless foe. He continued to report the proceedings in Parliament, and kept his eyes ever open for an opportunity to strike the Government with effect. In 1825 he succeeded in establishing the *Freeman*, which was thenceforth to some extent a rival of Mackenzie's *Advocate*. It was from the first conducted with great energy, and the editorials, which were often set up without being committed to paper, displayed exceptional vigour, but they were frequently disfigured by a coarseness and bad taste equal to anything of Mackenzie's production. For some time the better class of Liberals fought shy of the enterprise, but the editor steadily forced his way into general recognition.

The *Freeman* was permitted to continue its course unchecked for nearly three years. During that time it followed up the shortcomings of the Executive with ceaseless vigilance. To Sir Peregrine Maitland and Attorney-General Robinson it was a veritable thorn in the flesh. There was abundant occasion for criticism, and it was seldom, if ever, that Collins resorted to pure invention for the purpose of attacking the innumerable abuses of the time. There was always a sufficient substratum of truth in his accusations to render it inexpedient to prosecute him for libel. The punishment of what was false would have involved the public exposure of what was true. The official party realized the force of the laureate's dictum, not then propounded, that

> "A lie that is all a lie may be met with and fought outright,
> But a lie that is part of a truth is a harder matter to fight."

They of course did not present the matter in this aspect to the world at large. On the contrary, their organs claimed for them a spirit of generous and Christian forbearance. But this could not go on for ever. Collins continued to pour in his chain-shot from week to week with never-failing pertinacity, and with seeming impunity from the law. The Executive in the first place tried to check his career by crippling him financially. The Assembly had for some years previously been accustomed to vote him an annual sum by way of remuneration for reporting their proceedings. The paying over of this sum, however, was a matter entirely within the control of the Lieutenant-Governor. As it was known that Collins was poor, and that his resources were sometimes taxed to the uttermost to

enable him to bring out his paper, it was hoped that, by withholding payment for his services as reporter to the Assembly, he might be compelled to suspend publication. He was accordingly informed, when he applied for his money in the early spring of 1828, that the funds were not forthcoming. The sum in question was £113 10s., and was a matter of serious importance to him; but he well understood the object of the Executive, and spurred himself up to fresh effort. His paper appeared with the most provoking regularity, and its tone was, if possible, intensified by the withholding of the sum due to its editor. He told the story to the public, his account being garnished with profuse comments in his bitterest vein. The Executive found that they had miscalculated his resources, and that his press was conducted with renewed vigour. It was finally resolved that a dead-set should be made upon him, and that he should be overwhelmed by a shower of contemporaneous indictments. On Thursday, the 10th of April, 1828, as mentioned in the preceding chapter,* two bills of indictment for libel were found against him. One of these was for having, in his paper, charged the Lieutenant-Governor with partiality, injustice and fraud, in not paying over the money voted by the Assembly. The other was on the information of the Solicitor-General, Henry John Boulton, for animadversions on his conduct in connection with the duel, in 1817, between Samuel Peters Jarvis and John Ridout.† Upon the strength of these indictments Collins was forthwith arrested, and compelled to appear and give the required bail. On the following morning two other bills were found, upon which he also gave bail. It was at this time that he made his extraordinary attack upon the Attorney-General, before Justice Willis, as already narrated at length.‡ It will be remembered that he was instructed by the Judge to go before the Grand Jury and prefer his complaints. These instructions he followed without a moment's unnecessary delay. He appeared before the Grand Jury, and charged H. J. Boulton and J. E. Small with being accessary to murder in the killing of young Ridout. He next laid a charge of rioting against S. P. Jarvis and six of the other persons who had figured as defendants in the action brought by Mac-

1828.

* *Ante*, p. 171. † *Ante*, p. 13. ‡ *Ante*, pp. 171—174.

kenzie. The Grand Jury speedily returned a true bill against Boulton and Small. Both those gentlemen were then in Court with their gowns on. They were immediately put under arrest, and they so remained until late in the afternoon, when Judge Willis, upon the application of Mr. Macaulay, admitted them to bail. As Jarvis had been tried for the offence and acquitted, shortly after the duel in 1817, the Grand Jury now returned "No bill" as to him. On the following Monday a true bill was returned by the Grand Jury against the seven persons charged with riot. They were promptly arrested and held to bail.

Collins, having no faith in Attorney-General Robinson's integrity, was very unwilling that the prosecution of these cases should be conducted by him. Boulton was not only the Attorney-General's colleague as a law officer of the Crown, but was his warm personal friend, as well as a connexion by marriage. Boulton, in fact, was a profound admirer and faint *umbra* of the Attorney-General, in whose professional sunshine he basked, and at whose feet he may in an intellectual sense be said to have grovelled. Even the most Spartan of Crown prosecutors could hardly be expected to do his utmost to secure a conviction under such circumstances; and Attorney-General Robinson had nothing of the Spartan in his composition where the interests of his friends were concerned. Collins accordingly applied to Robert Baldwin to conduct the prosecution for murder. But the prosecution of criminal cases was not then open to the bar as a matter of course, and without the consent of the Crown. Mr. Baldwin applied to the Court for the necessary permission, which was granted with the Attorney-General's consent. The trial was proceeded with before Justice Willis at the opening of the Court on the morning of Monday, the 14th. The defendants, upon being arraigned, pleaded "Not guilty." The proceedings extended over two days, during which the same evidence was given that had been adduced at the trial in 1817. All the horrible details of the duel were revived for the edification of a crowded Court-room. Many of the spectators, as well as the Judge himself, were affected to tears. The custom of society was once more successfully pleaded in extenuation of a cruel and dastardly murder. As the chief offender had himself escaped scot-free, however, it would have seemed anomalous to punish the acces-

saries. The charge from the bench was eloquent and judicial, and the jury were absent from the box only ten minutes, when they returned into Court with a verdict of acquittal.

The trial of the type-rioters next required consideration. Collins's counsel moved for leave to the prosecutor to conduct this case also by private counsel, but to this the Attorney-General firmly refused to consent. It was urged that one of the accused was his nephew, and that two others had been clerks in his office at the time of the outrage. No matter; he was determined to withstand any further interference with Crown prosecutions on the part of the bar. There was no telling, he remarked, where such interference would end. There had already been too much of it. He was about to proceed with the prosecution, when Mr. Rolph arose on behalf of Collins, and expressed a wish that, as the painful investigation of the murder case had been finished, the prosecutions for libel might be discontinued. Judge Willis warmly seconded the proposal, and further suggested that the prosecution of the type-rioters might also be dropped. The type-rioters, however, were ready and waiting for their trial, and, through their counsel, objected to any abandonment so far as they were concerned. It was urged on their part that they had never wished to avoid prosecution, but had rather courted it; that they would accept of no compromise of a proceeding which had been maliciously and vexatiously instituted, not by the person injured, but by one who, being brought into Court for libel, had been received as a sort of public prosecutor, and allowed to harass them by raking into old transactions which had long since been investigated and atoned for. They insisted upon the matter being there and then finally disposed of, so that it might no longer be in the power of any malicious person wholly unconnected with the case to prosecute them at his pleasure.

The trial was then proceeded with. The persons charged were of course found guilty. Judge Willis was very lenient, and sentenced them to a nominal fine of five shillings each, expressly stating as a reason for this slight punishment that more than ample recompense had already been obtained in the civil action.*

* *Ante*, p. 136.

With respect to the indictments against Collins, the Judge's appeal to the Attorney-General was not altogether without efficacy, notwithstanding the ill blood between them. The fact is that the latter was glad enough of any excuse for abandoning the two prosecutions instituted by Boulton and Jarvis, feeling well assured that there was no likelihood of securing a conviction in either case. He could subserve his own and his friends' interests, and at the same time assume the appearance of deferring to the suggestion from the bench. The consent of the prosecutors having been obtained, he therefore announced in open Court that he would proceed no further upon those indictments. He added, however, that there were further indictments against Collins which had emanated from the Grand Jury, and that he could not with proper deference to them at once relinquish proceedings therein. "But I have no objections to state," said the Attorney-General, "that I will forbear any further action during the present Assizes, and that in proceeding or not hereafter, I shall be governed in a great measure by the sense which the defendant shall show of his duty and obligations as the conductor of a public newspaper." Bail was accordingly furnished by Collins on one of the presentments. The other was tacitly allowed to lapse; and there, for the time, the matter ended.

The editor of the *Freeman* certainly gave the Attorney-General no excuse for leaving him unmolested. In each successive issue of his paper he lashed the whole race of officials, to some of whom he applied the most opprobrious epithets. The Government organs pursued a similar course on their side, and characterized Collins and his friends in language too gross for quotation. The Attorney-General probably repented that he had not proceeded on at least one of the indictments during the late Assizes, and resolved that another opportunity should not pass unimproved. The autumn Assizes opened during the second week in October, when he attempted to press one of the old charges against Collins. The defendant appealed to Judge Sherwood, who occupied the bench, representing that his counsel was not in Court, and that he had never been arraigned. The Attorney-General replied that the absence of the defendant's counsel was not the fault of the Crown, and that he had been arraigned at the spring Assizes. The latter statement was

denied by the defendant, and upon referring to the Clerk of Assize it appeared that there had been no arraignment. Next day the Attorney-General again attempted to force on the trial, but as it was clear that the defendant had not been arraigned the latter now claimed the right to traverse. As this right was indisputable it was conceded by the Court, the result being that the defendant was entitled to have the trial held over until the next sittings, which would not take place until the following spring. The Attorney-General, however, was entitled to demand that the defendant should find security, and promptly urged his demand. Collins knew that were he to find the required security it would embarrass him in the conduct of his paper, and stated that he would prefer to be tried at once rather than adopt such an alternative. He was accordingly tried, and, though the prosecution was pressed against him with all the vigour at the Attorney-General's command, he was acquitted by the jury.

But the Attorney-General was not the man to allow his prey to escape him while any chance remained of securing a conviction. A fresh indictment was laid against him for a personal libel upon the Attorney-General himself. Collins, in reporting the trial which had just resulted in his acquittal, had accused the Attorney-General of "open palpable falsehood," and "native malignancy," and had referred to Judge Hagerman as "our old customer." This report had been published at full length in the *Freeman*, and it was the ground of the prosecution now instituted. The defendant laboured under the same compulsion with regard to security as before, and elected to stand his trial at once, which was precisely what the Attorney-General desired. The indictment, which may still be seen among the records at Osgoode Hall, was a truly formidable instrument, and set out the offence with great prolixity. The trial took place on Saturday, the 25th, before Mr. Justice Sherwood, who, in charging the jury, inveighed against the defendant with nearly as great vehemence as did the Crown prosecutor, stigmatizing him as "a wholesale retailer of calumny." He pronounced the *Freeman's* report to be "a gross and scandalous libel."* It was plainly evident that Mr. Sherwood's mind was not equable, and that he was influenced by

* The charge, as reported by Collins, will be found in the Appendix to the *Journals of Assembly* for 1829, pp. †27, †28.

considerations not properly before him. The fact that his son Henry, and his brother-in-law, H. J. Boulton, had respectively been prosecuted for riot and murder at Collins's instigation was too clearly held in remembrance, insomuch that every point was strained to the utmost against the defendant. Judge Sherwood, however, was absent from the bench when the jury returned into Court with their verdict, his place being taken by Judge Hagerman, who had many times been subjected to the arrows of Collins's satire, and who was referred to with bantering contumely in the very report which formed the subject of the present prosecution. The jury, after deliberating about five hours, brought in a verdict of "Guilty of a libel on the Attorney-General." The Clerk recorded a general verdict of "Guilty," which was read to the jury. The defendant's counsel objected to the recording of the verdict in this form, inasmuch as the jury had found his client guilty of libel on the Attorney-General only. A brief argument on the subject ensued, whereupon the Judge charged the jury to the effect that such a verdict as they had found could not be received. He informed them that if they found the defendant guilty of any part of the alleged libel, they ought to return a general verdict of "Guilty;" but that they might, if they thought proper, suggest to the Court on what particular part of the publication their verdict was founded, in which case the Court would confine the punishment to that part only. The jury thereupon retired a second time, but soon returned with a general verdict of "Guilty." On being asked by the Judge whether they adhered to their former opinion as to the libellous part of the publication, they answered in the affirmative.

The sentence of the Court was not pronounced until sufficient time had elapsed to admit of a conference on the subject between Justices Sherwood and Hagerman. That such a conference really took place is clear enough from a letter of Judge Sherwood himself, to be presently referred to. The sentence, when it came, created much surprise, not only in the bosom of the individual who was directly concerned, but among the public at large. It condemned the defendant to pay a fine of fifty pounds, to be imprisoned for twelve calendar months, to find securities for his good behaviour for three years after his liberation, himself in four hundred pounds and two sureties in one hundred pounds

each, and to stand committed until all these conditions should be complied with.

Certainly it was no wonder that the little world of Upper Canada opened its eyes at such a Star Chamber sentence as this, pronounced in the year of Grace 1828. It seemed as if the whirligig of time had brought back the days of Bartemus Ferguson and *The Niagara Spectator*.* It was an open question with many persons, even among those who were upon the whole favourable to the measures of the Government, whether the prosecution should have been sustained at all or not. A charge of "native malignancy" was not likely to seriously affect the character or standing of Attorney-General Robinson, who was ready enough to apply much stronger epithets to his enemies. But, however that might be, there could be no sort of doubt that the punishment awarded was wholly disproportionate to the offence, more especially when the defendant's circumstances were considered. If persisted in, the sentence really involved the latter's perpetual imprisonment, for no two men of substance were likely to be found who would feel safe in guaranteeing the good behaviour of such a turbulent spirit as Francis Collins for so long a period as three years. Throughout the whole of this infamous prosecution the Attorney-General showed to very little advantage. As previously mentioned, he had showered four indictments upon the defendant within the brief space of two days. Three of these he had withdrawn, and upon the fourth the defendant had been acquitted. He had then gone out of his way to lay a personal information upon a very insignificant pretext. Poor Collins was his enemy, and must not be allowed to characterize his conduct as "native malignancy," whereas the editors of newspapers under the patronage and pay of the Government were permitted to pursue a deliberate system of malicious vilification with impunity. The latter were allowed to publicly malign not only individual members of the Opposition, but to circulate the grossest libels upon the House of Assembly itself. With these offences the Attorney-General did not think fit to meddle. They were committed by his personal and political friends, and, unless common rumour seriously belied him, were not seldom committed at his own instigation. At any rate he maintained the most

* *Ante*, p. 42 et seq.

amicable relations with the libellers, and allowed no opportunity of serving their material interests to pass unimproved. Such inconsistency forced itself upon public attention. People who up to that time had supported the official party began to ask where this one-sidedness was to end. The Attorney-General had no right, it was said, to reward his friends for doing precisely the same things as those for which he punished and imprisoned his enemies. It was remembered against him how, when disputing with Judge Willis as to the nature of his official duties, he had with scorn repudiated the suggestion that he should proceed in the absence of instructions, even against notorious evil-doers. It was remembered that he had declined to take any official cognizance of so serious an offence against the public peace as the type-riot, which had been committed by his own friends and protégés. Yet he had here gone out of his way to prosecute to his ruin a poor wretch who, certainly not without great provocation, had merely accused him of falsehood and native malignancy. A man who accommodated his conduct to his inclinations in this way might perhaps be much beloved by his friends, but he certainly had no claim to be considered either good or great. The faction, from Dr. Strachan downwards, had for years been holding up John Beverley Robinson to the admiration of Upper Canadians. By many he had been accepted at their valuation. The Selkirk and Gourlay episodes, together with a score of others less noteworthy, had been slurred over. As the worst of these had occurred some years before, they had been partly forgotten by the existing generation. But the remorseless vindictiveness and cruelty displayed throughout the Collins prosecution were patent to everybody. They did much to lower the Attorney-General in popular estimation, and to destroy public confidence in the integrity of the Judges. They gave rise to an uneasy feeling of discontent, and doubtless had their share in bringing about the troubles of 1837-'38.

Collins went to jail, where, in spite of great exertions on his behalf, he was compelled to remain for many months. The fine was paid, like the damages in the type-riot case, by public subscription. Appeals from various quarters to the Lieutenant-Governor on the prisoner's behalf were made in vain. The incumbent of that office was no longer Sir Peregrine Maitland, whose torpid and nerveless administra-

tion had come to an end some weeks before,* when, as previously mentioned, he had taken his departure for Nova Scotia. His successor as Lieutenant-Governor of Upper Canada was Major-General Sir John Colborne, a distinguished officer of the 52nd Regiment, who had done gallant service in the Peninsula, and had fought at Waterloo. He is described by Napier, the historian of the Peninsular War, as having developed "an extraordinary genius for war." After the return of peace he had had some experience in diplomacy, having for some time been placed in charge of the Government in the island of Guernsey. His appointment to the more onerous and responsible post of Lieutenant-Governor of Upper Canada was heralded as the precursor of better times. It was announced that he had come over charged with instructions to reverse the fatuous policy of his predecessor, and to conduct the administration in accordance with the well understood wishes of the people. It seems tolerably certain that some such general directions as these had actually been given, but great latitude was necessarily left to Sir John himself; and, as after events proved, he was ill fitted for the discharge of such duties as had been entrusted to him. He was destined to furnish, in his own person, a sufficient argument against the absurd system pursued by the Home Government of saddling the colonies with military rulers. That Sir John was an excellent soldier goes without saying. It is certain, too, that he was in the main actuated by upright and honourable motives. But he had been "a man of war from his youth," and his early training and long military career had made him stern and unbending. He had no sympathy with the aspirations of a people who were just beginning to grasp the principles of constitutional liberty, and who saw many things in the body politic which called aloud for reform.

It did not take long for the people of Upper Canada to gauge the character of the new Governor, for he had not been a fortnight in the Province before he had practically allied himself with the Compact. Hardly had he assumed the functions of his office ere a petition, signed

*Sir Peregrine was gazetted to be "Lieutenant-Governor of Nova Scotia and its dependencies" on the 14th of August, 1828. On the same date Sir John Colborne was gazetted as Lieutenant-Governor of Upper Canada, but he did not reach the seat of his Government until late in the autumn, and Sir Peregrine did not actually demit office until the arrival of his successor.

by a number of influential inhabitants of York and its neighbourhood, was presented to him by a Committee on behalf of Collins. The facts were set out in detail, and his Excellency was asked to exercise the royal clemency by releasing the prisoner from his melancholy situation. Sir John's reply was non-committal, but not wholly discouraging. It conceded the advantages resulting from a free and well-conducted press, but expressed reverence for trial by jury, and referred to the danger of interfering with the verdicts of juries or the opinions of Judges unless their illegality could be clearly demonstrated. It added, however, that if his Excellency, after inquiring into the case, should come to the conclusion that his interposition was called for, a communication to that effect would be made to the person chiefly concerned.

In the face of this reply, it behooved the prisoner and his friends to wait a reasonable time before taking any further steps. Within the next few days a number of facts came to light which certainly went to show that there were at least good grounds for a new trial. It appeared that John Hayden, one of the jurymen, had been ignorant of the true meaning of the word "malignancy," and had sent out to the Court for Johnson's Dictionary, in order to arrive at a true definition. This indulgence was refused by the Court, and Hayden was constrained to accept the definition of another juror, whereby he was led to believe that the word in question has a much more serious significance than really attaches to it. By this means he had been induced to give his voice for the conviction of the defendant. Two other jurymen,* who were servile tools of the Attorney-General, had been actuated by undue prejudice, insomuch that they had expressed a strong pre-determination to convict the defendant. Then, the conduct of Mr. Hagerman, in sitting as a Judge in a case wherein he was personally concerned—it will be remembered that he had been derisively referred to in the report which formed the subject of the indictment—was an infringement of decency, to say nothing of its being a perversion of the letter and spirit of the law. He had also conferred with the Judge by whom the sentence was pronounced

* William Davenish and Andrew A. Thompson. The former stated that in the event of his being called as a juror he would "put it on to" Collins. See the *Freeman* for Thursday, December 25th, 1828.

as to the measure of punishment to be awarded. But he had not only sat in judgment in his own cause: he had refused to record the finding of the jury, whom he had misled and coerced into bringing in a verdict contrary to what they really intended. Judge Sherwood's conduct had been little better. He had delivered a charge to the jury which practically left them no alternative but to convict, unless they altogether disregarded his counsels. John Carey, editor of the York *Observer*, who was present on the occasion, testified that the Judge's charge appeared to him to outrage law and common sense.* Then, the sentence itself was so grossly out of proportion to the offence as to shock all ideas of justice, and to form a standing menace against the liberty of the press in Upper Canada. Yet Judge Sherwood, in pronouncing it, had expressly stated that it should be light, in consequence of its being awarded for a first conviction. It would be curious to know what punishment he would have awarded if the defendant had been previously convicted on a similar charge.

All these circumstances went far to prove that the defendant had met with considerably more or less than justice. And there were other facts which had an ugly look. The defendant, as already mentioned, was a Roman Catholic; yet, out of a large and respectable population professing the same religious faith, not one was to be found on the panel, although at the Quarter Sessions, held a few days later, the number of Roman Catholics summoned to serve on juries was exceptionally large. The Sheriff who empanelled the jury was a political enemy of the accused. So was each individual member of the Grand Jury who found the true bill against him. So were a large majority of the petty jury by whom he was tried. So was the Attorney-General who prosecuted him. So were the two Judges who presided at the trial. Taken in connection with the specific facts mentioned in the preceding paragraph, these matters gave rise to many unpleasant conjectures, and it was no wonder that the public voice exclaimed against the verdict as an unrighteous one. It was no wonder that public meetings were held in some of the rural districts to protest against what was almost universally pronounced to be a tyrannical abuse of the process of the Courts. It was no wonder that hisses and groans

* See Appendix to *Journals of Assembly* for 1829.

were sometimes heard from quiet nooks and corners when the Attorney-General passed along the streets of York. And it was no wonder that, coming, as it did, on the heels of other trials that differed with it only in degree, the case of Francis Collins caused many theretofore loyal subjects to ask themselves whether their loyalty demanded that they should forever continue to bend their necks to the yoke of the oppressor. What was Collins's case to-day might possibly be theirs or their sons' on the morrow.

On the 26th of November Collins sent in to the Lieutenant-Governor a pathetically-worded petition, in which the desolate condition of his young and helpless family was alluded to in brief but moving terms. It set out that, in consequence of his imprisonment, the business whereby he had supported his family was all but ruined, as its success depended solely on his personal exertions. Finally, he prayed to be restored to his liberty. Accompanying the petition were affidavits setting forth the admitted ignorance of one of the jurymen, and the pre-determination of the other two to convict. But the prisoner knocked at the gates of Sir John Colborne's heart in vain. The Lieutenant-Governor was by this time as completely hand and glove with the official party as his predecessor had ever been. Dr. Strachan and John Beverley Robinson managed him with great skill, and, by dint of much seeming deference, had him under complete control. Without being in the least aware of it, he was clay in the hands of the potter, who moulded him at will. As well might poor Collins have appealed for mercy to a half-famished tiger of the jungle as to these two Provincial representatives of law and gospel. His memorial, dated "York Gaol, November 26th, 1829," was not replied to until more than three weeks had elapsed, and when the answer came its contents indicated perfect callousness to the prisoner's unhappy condition. He was curtly informed that the Lieutenant-Governor could not think it right to comply with the petition, but that on the expiration of the specified term of imprisonment, any application which he might desire to make would be taken into consideration.

From this time forward the prisoner seems to have resigned himself to his fate, although his friends did not relax their exertions on his behalf. It seemed useless to apply for a new trial, as the application

would have to be made to either Sherwood or Hagerman, from neither of whom could he hope to obtain justice. The *Freeman* continued to make its appearance, although its publication was necessarily carried on under great disadvantages. The editor's spirit was by no means broken, and he sent forth from his place of confinement a succession of editorials as bitterly vigorous as any previous efforts of his pen. He also wrote a series of open letters addressed to the Attorney-General, in which that official's career, from his infancy onwards, was reviewed with caustic bitterness.* These letters were published in successive numbers of the *Freeman*, and must be presumed to have been a source of great annoyance to the gentleman to whom they were directed. Though many of the statements therein were perverse and wilful distortions of facts, there was a large element of truth, and it would not have been easy to expose the falsehood without admitting much that could not be denied. The Attorney-General contemplated another prosecution, but thought better of it—not, it is to be presumed, from any want of vindictiveness, but because he felt that there was a limit to the public endurance, and that that limit had pretty nearly been reached.

In January, 1829, the Collins case was taken into consideration by the Assembly. A Committee was appointed, and a rigid inquiry instituted into some of the most interesting features. Attorney-General Robinson was examined at considerable length. Judges Sherwood and Hagerman were summoned before the Committee, but both of them declined to answer any questions. A good many important facts were elicited, upon the strength of which an Address to his Excellency was passed, recapitulating the circumstances, and praying for a remission of the sentence. The reply was of the same inexorable character as that previously made to Collins's own petition. "It is my anxious wish," was the response of the Lieutenant-Governor, "to render service to the Province, by concurring with the Legislature in everything that can promote its peace, prosperity and happiness; and I regret exceedingly that the House of Assembly should have made an application to me which the obligation I am under to support the laws, and my duty to society, forbid me, I think, to comply with." For the information of

1829.

* *Ante*, pp. 101, 102, note.

the House, his Excellency forwarded a copy of a letter addressed by Justice Sherwood to the Governor's Secretary, embodying certain reasons for the judgment of the Court in the case. The Judge, it will be remembered, refused to assign any such reasons when questioned on the subject by the Committee of the House of Assembly. As to his right to so refuse there can hardly be much difference of opinion, but he would have been more consistent if he had also refused when applied to by the Lieutenant-Governor. After admitting the right to publish fair and candid opinions on the Government and constitution, the Judge declared that if a publisher "steps aside from the high road of decency and peaceable deportment, and adopts a course of public calumny and open abuse against the officers of Government generally, or particularly against the principal law officer of the Crown, in the legal discharge of his duty in the King's Courts, as the defendant did," then it was the Judge's conviction that the publisher so offending should be "punished to that extent which, in human probability, would prevent a recurrence of the offence." And yet this same Judge, in pronouncing sentence, had expressly declared that the sentence should be a light one, as it was the defendant's first offence. The conclusion of the letter showed plainly enough that a conference had taken place between Justices Sherwood and Hagerman before the imposition of the penalty. It proved, indeed, that the sentence was to be considered as the joint sentence of the two Judges. "Taking all the circumstances of the case into consideration," it ran, "Mr. Justice Hagerman and myself deemed the sentence which we passed on the defendant both proper and necessary for the public good, and what the case itself required."

Two or three further appeals were made to the Lieutenant-Governor on the prisoner's behalf, all of which proved ineffectual. The matter was really in the hands of the Attorney-General himself, who was inexorable, and would be satisfied with nothing short of the fullest expiation. The Assembly meanwhile did not relax its efforts to obtain a commutation of the sentence. On the 12th of March an address to the King was passed by that body, whereby His Majesty was entreated "to extend to Francis Collins the royal clemency, by remitting the residue of his punishment." Not much was hoped for from this proceeding, as it

was felt that the whole influence of the Executive would be put forward against it. The prisoner himself made up his mind to accept the inevitable, and to serve out at least the full term of the sentence imposed. He continued to supply editorial articles for his paper, couched in a strain which seemed to indicate his superiority to circumstances. But his buoyant spirit was measurably tamed by his long imprisonment, and it was remarked that he was never again quite the same man as before. Contrary to his anticipations, the address of the Assembly finally proved effective, and he was permitted to walk forth from the jail a free man. His paper came forth from week to week, but its tone was evidently modified and subdued. Something of the old spirit occasionally flashed forth, but fitfully and transitorily only, like the flicker of a lamp before its extinction. It was clear that the editor had not forgotten the indignity and mental suffering he had undergone, and throughout the remaining years of his life he always dwelt more or less in the shadow of the cold and solitary cell. The records of the jurisprudence of civilized countries contain few modern instances of the exaction of so severe a penalty for so insignificant an offence.

The narrative has no further concern with Francis Collins, except to record that he continued to edit and publish the *Freeman* down to 1834, when he fell a victim to the cholera invasion by which the Provincial capital was ravaged during that year. He died on the 2nd of September, and the *Freeman* thenceforth ceased to exist.

CHAPTER X.

LIGHTS—OLD AND NEW.

IN the preceding five chapters an attempt has been made to reduce to narrative form a great mass of heterogeneous material bearing upon the "Story" which it is the purpose of these volumes to relate. A considerable proportion of this material is to all practical intents inaccessible to the general reading public, being scattered here and there through old and long-forgotten newspapers, blue-books, pamphlets and unedited manuscripts. Yet some acquaintance with it is absolutely necessary to a clear comprehension of the deplorable state of things which existed in this Province during the régime of Sir Peregrine Maitland and his successor. No one who is ignorant of it is capable of expressing an intelligent opinion as to the merits or demerits of the Rebellion and those who took part therein. The principal facts and circumstances attendant upon some of the most flagrant exhibitions of Family Compact oppression which mark the fourth decade of Upper Canadian history have therefore been set forth in consecutive order, and with considerable minuteness. The picture thus afforded of Provincial society and Government, though pregnant with instruction, is by no means an attractive one, and any person contemplating it for the first time may well be excused for questioning its perfect accuracy. The drawing, at times, seems to be too wavy in outline, and some of the details have the appearance of being painted in colours too glaring to be natural. But a strict examination of the properties will correct all such impressions. Varying themes require varying methods of treatment. There are certain features of landscape which must not be drawn with absolute sharpness of outline, and there are subjects to which neutral tints

altogether fail to do justice. Of such a character are more than one of the scenes here reproduced. Independently of the mere method of treatment, the historical evidence is so clear and explicit that it can be questioned by no one who takes the trouble to examine it. As to mere matters of fact, there will be little or no difference of opinion among those who consult and compare the various authorities cited in the notes.*

The cases hitherto recorded are merely a few out of many, but they suffice to tell the story of Executive cruelty and selfishness during the period referred to more effectively than it could possibly be told without their aid. To set forth with equal fulness of detail the circumstances attendant upon the persecution of Jonah Brown, Robert Randal, Hugh Christopher Thompson, and a round score of minor victims, would be to extend this work to an interminable length. The materials for a work written on such a plan are abundant, as they include all the facts arising out of the stupendous iniquity sought to be perpetrated under the guise of the Alien Bill. The particulars connected with the attempt to force this infamous measure upon the people of Upper Canada cannot be inquired into in these pages. Sufficient to say that it was a most dishonest and unstatesmanlike attempt on the part of the Executive to get rid of political opponents by repudiating the well-understood obligations of their predecessors in office: an attempt to dispossess persons who, relying upon the faith of the Government of the day, had settled in the country and taken up lands, to which they had received titles, and upon which they and their parents had in many cases resided ever since Governor Simcoe's time. The attempt failed through the vigilance of the Opposition and the interference of the Imperial Government, but it proved the length to which the official party were prepared to go in order to maintain the existing order of things. It was of a piece with the rest of the Executive policy, which seemed to wax more and more exacting and one-sided with lapse of time. It was abundantly clear

* It has not been thought desirable to incumber the text with foot-notes except where they seemed to be needed for purposes of elucidation; but in every matter of real importance, where the reader of average information and intelligence may reasonably be supposed to be in doubt as to the source of the narrative, care has been taken to indicate the authority.

to many persons unconnected with the Reform party that there was no justice in the land for a Reformer, and that the oligarchy by whom the country was dominated cared nothing for its best interests. Constitutional liberty was systematically trampled under foot. The oft-quoted boast of the Founder of the Province about the Upper Canadian constitution being "the very image and transcript of that of Great Britain"* seemed the hollowest mockery when viewed in the light of events which had become a matter of frequent occurrence.

It was not only to the thumbs of political opponents that the Executive screw was applied. When occasion arose it was applied with surprising energy and vigour to the thumbs of those who had long been obedient slaves of the Administration. Nothing more clearly shows the shameless exercise of power on the part of the faction: nothing more clearly proves the complete subordination of their tools, and the depths of degradation to which public men could be made to stoop: than an episode which occurred during the Parliamentary session of 1828. The persons chiefly involved were the Hon. James Baby, who was himself Inspector-General of Public Accounts and senior member of the Executive Council, and ex-Chief Justice Powell. It has already been explained that the first-named personage had for some time past ceased to carry any great weight at the Council Board, where he had been to a considerable extent superseded by his juniors.† His seniority was merely in point of time, and his influence on the policy of the Government was as insignificant as it possibly could be, consistently with the position which he held. He keenly felt his having been, so to speak, thrust into the background, and in several instances showed a disposition to assert himself by acting independently. A similar feeling, but milder in degree, animated the breast of the ex-Chief Justice, whose place as principal lay adviser of the Lieutenant-Governor had long since been taken by Attorney-General Robinson. During the session of 1823-4 he had seen fit to protest against a School Bill passed by the Assembly, under which Dr. Strachan was intended to and did actually derive a sinecure salary of three hundred pounds a year. His protest, at his own urgent request, was entered on the journal, where it seemed likely to remain a perpetual

* *Ante*, p. 48. † *Ante*, p. 140.

memento of his independence and of the servility of his colleagues. But this was by no means desired by the Lieutenant-Governor and the Attorney-General. Pressure was brought to bear upon the recalcitrant member, under the influence of which he was forced to succumb. He consented that the protest should be erased from the journal, and it was erased accordingly.* But a still more sickening humiliation was in store for him, as well as for the venerable Mr. Baby.

During the session of 1828 several petitions were received by the Assembly praying for relief against a law passed in 1825, whereby certain taxes had been imposed on wild lands.† Among other grievances complained of was the manner in which the law had been passed. It was distinctly alleged in one of the petitions that the measure had been pushed through both Houses with too great rapidity, and that most culpable means had been employed in order to procure the assent of certain members to whom it was objectionable. The Assembly entertained the petitions, and appointed a Committee to inquire into the matter. A number of witnesses were examined, and some astounding facts elicited. The allegations as to undue influence were proved by the clearest evidence, and by witnesses who had generally been accustomed to act with the Government. One of these was our somewhile acquaintance, the Hon. William Dickson, who, as has previously been seen, was the owner of an immense tract of land,‡ and was consequently seriously affected by the law enacted in 1825. His evidence, as printed in the Appendix to the Journals of the Assembly,§ stands as a perpetual indictment against Sir Peregrine Maitland and the venal clique by whom he was surrounded. It appears that from the time when the Bill relating to the taxation of wild lands was first introduced into the Upper House it

* See *Seventh Report of Grievance Committee*, p. xxxvii. The School Act referred to was 4 George IV. cap. 8, passed on the 19th of January, 1824. John Henry Dunn, Receiver-General of the Province, seems also to have protested against the measure, and to have consented, under pressure, to the erasure of his protest. See the evidence of the Hon. William Dickson and the Hon. Thomas Clark, referred to in the ensuing paragraph of the text.

† The royal assent to this Act was promulgated by a proclamation bearing date April 4th, 1825.

‡ *Ante*, p. 14.

§ See *Report on Petitions against Wild Lands Assessment Law*, in Appendix to *Journals of Assembly* for 1828, p. 107 *et seq.*

was an unpopular measure, and that it was opposed by a majority of the members. Most of the latter were large landholders by virtue of their membership, and some of them had acquired additional blocks by purchase. The obnoxious Bill was opposed at every stage, and there seemed to be no possibility of its becoming law. Its defeat being regarded as inevitable, its opponents to some extent relaxed their efforts, and congratulated each other upon their apparent success. On the third reading, however, Mr. Dickson found, to his supreme astonishment and disgust, that some of the members upon whom he had relied for votes presented an entire change of front, and appeared in the *rôle* of supporters of the measure. It was noticeable that all the converts, or perverts, held offices under the Government. The Hon. John Henry Dunn, Provincial Receiver-General, took a different course. He had been among the most determined opponents of the Bill, and had declared that it would never pass.* He had too much self-respect, after taking such a stand, to give the lie to all his protestations by voting for the measure, so he quietly staid at home on a pretence of sickness.† Referring to those who took a more determined stand, by voting contrary to their pledges, Mr. Dickson says: "This change, I am satisfied, arose from intimidation by the Local Government, who seemed determined to carry the measure at any sacrifice. It was most painfully manifest from their countenances and demeanour that the change was not from conviction, but from coercion. The business of the Legislative Council was suspended for two hours for a meeting of the Executive Council. And I do believe that at that Council the members of the Legislative Council holding offices were constrained at the peril of their situations to vote for the measures they had a week before decidedly opposed. Upon those members returning that day to their legislative duties there was a change of voting, and one of those who staid away on pretence of sickness was, to my knowledge, able to attend." The reference here is presumably to Mr. Dunn. Mr. Dickson's evidence then goes on to say that about ten minutes before the vote was taken, a message was delivered to the Hon. James Baby that Major Hillier wished to speak to him. Major Hillier was the Lieutenant-Governor's most confidential secretary, and was employed in numberless

*See *The Split in the Legislative Council*, by F. C. [? Francis Collins], p. 7. †*Ib.*, p. 8.

little transactions requiring the exercise of coolness and tact. In response to the message Mr. Baby left his place in the House, and did not return for some time. Upon his return from the interview to his accustomed seat he was evidently much confused and agitated. Being spoken to by Mr. Dickson he found it impossible to conceal his agitation, but told his interlocutor, to that gentleman's great astonishment, that he must vote for the Bill. When the time came he accordingly voted with the Government, and the Bill was carried by a small majority, Messieurs Dickson and Clark entering a determined protest against it. "After the passing of the Bill," continues Mr. Dickson, "the Hon. Mr. Baby, after leaving the House, put his hand upon his heart, and, with reference to his change of conduct on the measure, said something about his children, expressive of his regret at the necessity which drove him to the abandonment of the course he had pursued."

Mr. Powell, who was then Speaker of the Legislative Council, was evidently subjected to similar influences. Like Mr. Baby, he had been strenuous in his opposition to the Bill, and had even gone so far as to speak harshly of some of those who promoted it. But he was speedily made to know his place, and the tenure by which he held it. During a portion of the two hours when the business of the Legislative Council was suspended he was in secret conference with Major Hillier and one or more members of the Executive Council.* When he took his seat upon the resumption of the business of the day, it was noticeable that he, as well as Baby, was labouring under undue embarrassment and agitation. It was beyond any reasonable doubt that they had been shamelessly coerced, and had been compelled to choose between voting as they were commanded or being dismissed from their respective offices. Upon being questioned by Mr. Dickson, Powell admitted that he had changed his opinion, and added, in seeming sincerity, that he had received new light on the matter within the last ten minutes. Such an exchange of an old lamp for a new one must surely have been the work of some malignant and monstrous genie at the Council Board.

It should be mentioned that Dickson's evidence, so far as "extraordinary and undue influence by the Local Government" is concerned,

* *The Split in the Legislative Council*, ubi supra, p. 10.

is fully confirmed by the evidence of the Hon. Thomas Clark, who was also a member of the Upper House, and was present at the proceedings above described.

There could not well be any more conclusive proof of the unconstitutional and corrupt manner in which the Government was carried on during Sir Peregrine Maitland's time than is afforded by the circumstances just narrated. They read like a chapter out of the political history of England during the last century. The methods employed by Walpole exhibit nothing baser or more repulsive than these. His aphorism about "every one of them" having his price might well have been echoed by Sir Peregrine, so far as the Legislative Council was concerned, with the addition that the price in Upper Canada was sometimes ridiculously low. The persons who were guilty of these gross violations of the constitution, to say nothing of the commonest principles of honesty, were incessantly prating of their devoted loyalty to the Crown. Yet it is plain enough that their fealty was always subservient to what they deemed to be their personal interests. This was as clearly apparent in 1837 as it had been in 1828. When, a few years later,* a crisis arose in which they were compelled to choose between those interests and their devotion to the Crown, it was once more abundantly manifest that theirs was the veriest lip-loyalty. The burning of the Parliament Buildings at Montreal was as direct an act of treason as was the affair at Montgomery's Farm.

In 1828 there was a general election, in the course of which the Executive party made tremendous exertions to regain a predominating influence in the Assembly. They perceived plainly enough that a hostile majority in the Lower House must in the end prove fatal to them. They might temporarily set it at naught, through their control over the Legislative Council and the absence of ministerial responsibility, but they could not hope to keep up such a farce for all time. This knowledge impelled them to adopt every means which their ingenuity could devise to secure the return of candidates who might be relied upon to support their policy. Their success was by no means proportionate to their efforts. When the returns were all in it appeared that the Opposi-

* In 1849.

tion had rather gained than lost by the contest. Two staunch members of the Compact were defeated in what had theretofore been regarded as safe Tory boroughs, and Attorney-General Robinson's majority in the Town of York was greatly diminished. All the most prominent
1829. Reformers were returned, and at the opening of the session on the 8th of January, 1829, Rolph, Bidwell, Perry, Matthews and Dr. Baldwin took their seats on the Opposition benches. To their number was now added William Lyon Mackenzie, who had been returned for the County of York. His election was a surprise to the Government party, and was pronounced by them to be an everlasting disgrace to the intelligent and populous constituency which had returned him. He repaid such compliments as these with others of a like character, and gave back as much as he received, if not with usury, at least with fair interest.

Mr. Bidwell was elected to the Speaker's chair by the new Assembly, and on every test question the Government were left in a hopeless minority. The vote on the Address in Reply will afford some clue to the political complexion of the House. It referred to the Lieutenant-Governor's advisers as having deeply wounded the feelings and injured the best interests of the country; yet it was carried with only one dissentient vote—that of J. H. Samson, one of the members for Hastings. Reform was evidently in the ascendant throughout the Province; but, as during the preceding Parliament, the exertions of the majority in the Assembly could do little for Reform under the existing state of the constitution. The Lieutenant-Governor responded with curt ambiguity to the Assembly's Address, and cemented his alliance with the Compact by refusing to grant the prayer of the petition for the release of Collins. The Government submitted to one defeat after another with dogged sullenness, but with undiminished contempt for the idea that successive defeats imposed upon them any obligation to resign.

The session of 1829 was a noisy and quarrelsome one. Hardly had Mackenzie taken his seat before he began that system of inquiry and agitation which he thenceforward pursued throughout the whole of his career as a member of Parliament. He instituted an investigation into the management of the Provincial Post Office, conducted an inquiry as to the privileges of members of the Assembly, and as to the behaviour

of certain returning officers, and generally busied himself with important matters of detail. He displayed precisely the same characteristics as a legislator that he had displayed as the conductor of a newspaper—great energy and vigilance, accompanied by a critical and fault-finding spirit, and an almost entire absence of tact and discretion. He gave wanton and unnecessary offence to those who differed from him in opinion, not only on important political questions, but even on comparatively insignificant matters of every-day occurrence. His coadjutors found that, independently of the sincerity or insincerity of his intentions, his judgment was not to be trusted. He could be misled by any *ignis fatuus* that displayed a bright light, and was led into many a Serbonian bog from which he was not extricated without serious difficulty. Some men have an unerring instinct which, even in the absence of calm judgment or mature reflection, commonly leads them in the right path. Mackenzie's first conceptions, on the contrary, were almost invariably erroneous; and he had a perverse habit of frequently clinging to an idea once formed, even when experience and deliberation had proved it to be unsound.* At other times his opinions were as changeable as the hue of the chameleon. In short, he was a creature of impulse, and too often acted upon the motto of "First fire—then inquire." This was perhaps a misfortune rather than a fault, and under ordinary circumstances would have merited lightness of touch on the part of the historian. But Mr. Mackenzie is identified with a movement which forms a conspicuous and dramatic passage in Upper Canadian chronicles, and in justice to others it becomes highly necessary to form a correct estimate of his personality. This is all the more essential from the fact that he himself at different times gave various and conflicting accounts of the episode

* Such, as far as I have been able to learn, was the conviction of all Mackenzie's contemporaries, even of those most favourably disposed, including those who were thrown into the most intimate relations with him, and were bound to him by close ties. One of the foremost of these, in a conversation with me a short time since, remarked: "Mackenzie generally meant well, but he was unpractical and unmanageable. I knew him intimately from his boyhood, and I am compelled to say that whenever he was in the least excited he acted like a spoiled child. He underwent no change in this respect, and was the same in youth, manhood and old age. A more unfit person to be entrusted with the management of any great enterprise, or with the control of his fellow-creatures, I can hardly conceive." I have abundant written testimony to the same effect.

with which his name is inseparably blended, which accounts have hitherto been the only sources of information drawn upon by so-called historians. All the references to the Upper Canadian Rebellion to be found in current histories are traceable, directly or indirectly, to Mackenzie himself, and all are built upon false hypotheses and perverted representations of events. To Mackenzie, more than to any other person, or to all other persons combined, are to be attributed all the worst consequences which flowed from that feebly-planned and ill-starred movement. All the facts point to the conclusion that if he had been content to play the patient and subordinate part properly belonging to him, the whole course of his subsequent life might have been shaped much more smoothly, and he might have been saved the most serious of the privations which he was compelled to undergo. Much sorrow and suffering would also have been spared to others. The injury that may be done in a primitive community by a man who combines good intentions and great energy with excessive obstinacy, misguided ambition, and perversity of judgment, is simply incalculable. The subsequent course of the narrative will be found to fully bear out these reflections, and to point a moral even where there is no intention to moralize.

Beyond the perpetual friction which was kept up between the Executive body and the Opposition, the session of 1829 was barren of events of permanent political importance. The Executive was tolerably independent of the popular branch of the Legislature, for it retained the casual and territorial revenues, and could get along without an annual vote for supplies. No fewer than twenty-one Bills passed by the Assembly were rejected by the Legislative Council during the session. "The Province," says Mr. MacMullen,* "presented the unconstitutional spectacle of a Government requiring no moneys from the Assembly, and a Legislative Council of a totally different political complexion from the popular branch of the Legislature. No restraint could now be imposed on the Executive by an annual vote of supplies. It was completely independent of the people." And it declared its independence in the most emphatic manner by inserting in one of the Lieutenant-Governor's messages a direct intimation that the Assembly would not be asked to trouble itself about ways and means.

* *History of Canada*, p. 370.

Certain episodes occurred during this session which are deserving of something more than passing reference, not only as indicative of the manners of those times, but because they concern personages whose achievements were fated to occupy much space in the annals of our country. The Lieutenant-Governor, Sir John Colborne, had not long been installed in office before he was exhibited in effigy in the streets of Hamilton. Certain Tories who were believed to have taken part in the exhibition openly asserted that the Hamilton Reformers were responsible for it. It was at the same time alleged that there was a plot on the part of the Reformers to release Francis Collins from York jail by force of arms. The two stories emanated from a common source, and as they were without any foundation in truth the Reform leaders in the Assembly deemed it proper to institute an inquiry into the matter. Upon motion of Mr. John Rolph a Committee of Investigation was appointed, with power to send for persons and papers. It was known that Allan Napier MacNab, who was then an impecunious young lawyer in Hamilton, could give certain important information about the affair, and he was summoned to appear before the Committee during the second week in February. He obeyed the summons, so far as presenting an appearance was concerned, but he refused to reply to certain questions put to him, and conducted himself with great insolence and want of discretion. Being again summoned before the Committee, to answer for his conduct, he read a written defence which had been prepared for him, and which rather aggravated his offence than otherwise. Accordingly, on motion of Dr. Baldwin, seconded by George Rolph, the future baronet was committed to York jail, under warrant of the Speaker, during the pleasure of the House. After remaining in custody about ten days, Mr. MacNab addressed a letter to the House which reads very much like a repetition of his former contempt, but which the Assembly seem to have construed very charitably, as on the 3rd of March a motion was carried for his discharge, and he was set at liberty.

This brief term of imprisonment, which in all lasted less than a fortnight, was the turning point in the reckless young lawyer's career. Up to that time he had been nobody, and had had no apparent prospect of ever attaining to any importance. But from this time forward the

official party regarded him in the light of a martyr who had suffered in the good cause. They feasted and lionized him, and did their utmost to advance his fortunes. At the elections which took place during the following year they returned him as one of the representatives of the County of Wentworth in the Assembly, where, though he lacked sufficient ballast to display anything like statesmanship, he made considerable noise, and erelong became a notable personage. He was voluble, and made many verbose speeches, the matter of which never rose above the veriest commonplace, but as it was always charged with emphatic High Toryism it was applauded to the echo by the official party. Eventually, as every Canadian knows, he obtained high distinction and eminence, and had abundant reason to bless the discipline which he had received at the hands of a Parliamentary Committee. But for that discipline he might have lived and died an obscure country lawyer. To that discipline he was indebted for all the honours which subsequently descended upon him. By its aid he successively became a member of the Upper Canadian Parliament, Speaker of the Assembly, Commander-in-Chief of the Upper Canadian land forces during the Rebellion, Knight, Queen's Counsel, member of the United Parliament of Canada, leader of the Tory Party in the Canadian Legislature, Premier, President of the Council and Minister of Agriculture, Baronet, honorary Colonel in the British Army, Aide-de-Camp to the Queen, Speaker of the Legislative Council. He also became father-in-law to a peer of the realm, and died Sir Allan MacNab of Dundurn. Certain passages of his life will form the subject of future consideration. Meanwhile it will be sufficient to remark that each successive link in the long chain of his triumphs may be distinctly traced to his supposed martyrdom at the hands of the Reform majority in the Upper Canadian Assembly in 1829.

Another personage cited to appear before the Assembly's Committee on the same investigation was the Hon. H. J. Boulton, Solicitor-General. He displayed the same reticence as young MacNab, and refused to reply to certain questions put to him by the Chairman. He was soon taught that the high position which he occupied, backed, as it was, by the support of the party in power, could not shield him from the consequences of his refusal. Upon motion of Dr. Baldwin a resolution was

adopted that the Solicitor-General had been guilty of a high contempt and breach of the privileges of the House. He was placed at the bar, where he showed more sense of propriety than had been shown by his predecessor. He had no desire to wear a crown of martyrdom, and did his utmost to purge himself of his contempt. He pleaded that he had intended no disrespect to the Committee, nor any breach of the privileges of the Assembly, and concluded by saying that he stood ready to answer, if the House so desired. The House acted magnanimously, not choosing to humiliate a beaten man any farther than was necessary for the due vindication of its own authority. John Rolph, seconded by Dr. Ambrose Blacklock, one of the members for Stormont, moved that the Solicitor-General be admonished by the Speaker, and discharged on payment of fees to the Sergeant-at-Arms. The motion was carried, and it only remained for the culprit to submit to the mild discipline which he had been adjudged to bear.

But there was reason for believing that that discipline would be a trying ordeal for the Solicitor-General. The Speaker who was to pronounce the admonition was no commonplace piece of clay, trained to the set phrase of office, like the previous occupant had been. He was no less a personage than Marshall Spring Bidwell, who, with perhaps the single exception of John Rolph, was the most eloquent and powerful speaker in the Province. When moved to righteous anger, he was capable of administering a scorching reproof, and if a man is ever justified in taking his antagonist at a disadvantage, ample justification was to be found in the present instance. Mr. Bidwell had reason to hate the very name of Boulton, and might well be expected to avail himself of such an opportunity of darting the hot iron into his enemy's soul. There was a feud of long standing between the Bidwells and the Boultons. The Bidwells had sustained serious wrong and insult at the hands of the Boultons, and the Boultons hated the Bidwells with the hatred which small natures always feel towards higher natures which they have wronged. It was a Boulton who had been despatched to Massachusetts in 1821, to hunt up evidence as to the alleged misconduct of the elder Bidwell.* It was this same Henry John Boulton who had joined with his friend the

* *Ante*, p. 100.

Attorney-General in abusing and maligning the elder Bidwell during the election campaign of 1821, and afterwards. It was he who had put forth all the little strength that was in him to assist his party in bringing about the expulsion of the elder Bidwell from the Assembly.* He had done his utmost, and successfully, to induce members of Parliament to vote for the statute which had forever closed the doors of the Upper Canadian Legislature to the ex-member of Congress.† He had opposed the return of the younger Bidwell to the Assembly, and more recently, though he was not then a member of the House, he had done what he could to keep him out of the Speaker's Chair by influencing members in favour of John Willson. He had lost no opportunity of making himself personally offensive to Mr. Bidwell, whose abilities he envied, and whose character he was utterly incapable of appreciating. It will thus be seen that all the attendant circumstances combined to make Mr. Bidwell hate and contemn his adversary. If he failed to do so the explanation was to be found in his own gentle nature, and not in the lessons of humiliation which the Boultons had endeavoured to impose upon him.

It was a memorable scene when the Solicitor-General stood up, on the 20th of February, to receive the admonition which he had been adjudged to endure. He was in a state of tremor, for he was conscious of the disadvantage of his position, and he dreaded the power of the Speaker's tongue. His friends also felt much solicitude on his account, for they knew how little consideration he deserved at the hands of the man who now had him in his power. For some moments a solemn silence reigned supreme. Then the Speaker's voice was heard; low at first, but steadily rising into clear and impressive tones which made every word sink deep into the hearts of the listeners. And the words themselves: how different from what the expectant personage at the bar had looked for! Nothing of malice or revenge there. Nothing but quiet dignity and forbearance. No mere spectator could have told whether the offender was a personal friend or an enemy of the Speaker. The voice was full of feeling, but utterly devoid of passion or malevolence. The power of Parliament was fully vindicated, yet the transgressor escaped without any unnecessary laceration of his pride. "By every

* *Ante*, p. 101. † *Ib.*

member of the community," proceeded Mr. Bidwell, "a ready and cheerful respect should be shown towards the House of Assembly, who represent the people of the Province, whom the constitution has entrusted with important privileges for the benefit of their constituents, and who are amenable to them for all that they do. But it might in a peculiar degree have been expected of you, whose duty it is to enforce submission to the laws and respect for the institutions of the country." Here Mr. Boulton bowed his head as if in mute assent. He was then informed that the House could not permit this formal and gratuitous denial of its authority to pass unnoticed. "It is important," continued the Speaker, "that by its proceedings against you a warning should be given, before others are led by the influence of your sentiments and conduct to dispute an authority which the House is bound to vindicate and enforce. It is necessary that it should go thus far; but it gives me great satisfaction to observe that its duty does not compel, nor its inclination induce it, in your case, to go any farther than is requisite to attain this object; and, finding from your answer that you are now disposed to treat its privileges with just and becoming respect, and to defer your own private opinion to the judgment of that body whose constitutional right it is to decide upon its own privileges, it is willing to dismiss you with no other punishment than this admonition from its Speaker. This moderation is a proof that these privileges have been safely lodged by the constitution in its hands, and that they will never be used in a wanton or oppressive manner. It is by the order and in the name of the House that I thus admonish you, and direct that the Sergeant-at-Arms do now discharge you from custody." He was discharged accordingly, and left the house profoundly affected by the magnanimity of the man whom he had so grievously injured. One who seems to have watched him as he took his departure has recorded that the Boulton crest never hung so low as at that hour.* Nothing could have more clearly proved the greatness of soul of Mr. Bidwell than this episode; nothing could have more effectually illustrated his capacity to rise superior to all merely personal considerations when entrusted with the discharge of a public duty. The London *Times* published a full

* *The Hamilton Outrage*, by "Vindex," p. 9. York, 1829.

report of his admonition, which it pronounced to be the best paper of the kind on record.

During the following summer an event took place which removed Attorney-General Robinson from the atmosphere of the Assembly, and was the indirect means of introducing Robert Baldwin to public life. This was the appointment of Mr. Robinson to the place of Chief Justice of Upper Canada. The office had just become vacant through the retirement of Chief Justice Campbell, who had received the honour of knighthood during his absence in England. Mr. Robinson thus obtained the reward which he had long coveted, and which his devotion to successive Lieutenant-Governors had richly earned. There was some doubt as to the strict legality of his passing directly from the office of Attorney-General to that of Chief Justice. To remove the doubt he accepted the position of Registrar of the County of Kent, which he resigned after holding it a few days. His appointment to the Chief Justiceship was made on the 13th of July, but owing to the delay occasioned by his acceptance of the inferior office it was confirmed and re-dated on the 3rd of August following. He then took his seat on the bench, and was destined to remain there for more than thirty-three years. As Chief Justice he succeeded to the Presidency of the Executive Council, and at the opening of the session in the beginning of 1830 he was nominated Speaker of the Upper House. His removal from the Assembly therefore did not remove him from the political arena, and for years afterwards he continued, in conjunction with his friend and quondam tutor Dr. Strachan, to direct the policy of the Government as completely as he had done for some years previously. He was succeeded in the office of Attorney-General by Henry John Boulton. The temporary purpose for which Mr. Hagerman had been appointed to the bench, in place of Mr. Justice Willis, having been fully effected, that gentleman now threw off his official robes and succeeded his friend Boulton as Solicitor-General.

Mr. Robinson's elevation to the bench left a vacancy in the representation of the Town of York. This vacancy young Robert Baldwin successfully aspired to fill. At the last general election, in conjunction with J. E. Small, he had unsuccessfully contested the County of York with W. L. Mackenzie and Jesse Ketchum. He was now opposed in the

town by the same individual who had so lately been his coadjutor in the county. Mr. Small was defeated, but, at his instance, the return was declared void, the writ for the election having inadvertently been issued by the Lieutenant-Governor instead of by the Speaker of the Assembly, as in strictness it should have been. A new writ was issued, and Mr. Baldwin again contested the seat, his opponent now being the Sheriff of the County, William Botsford Jarvis. The Sheriff naturally enjoyed many advantages in such a contest, but he was defeated by a considerable majority, and on the opening of the session in the following January, Robert Baldwin, then in his twenty-sixth year, took his seat in Parliament for the first time. He however did not make any conspicuous figure during the session. He had already fully imbibed the idea that a responsible Executive was the great want of Upper Canadian polity, and took comparatively little interest in the subordinate questions of the day. He could see no good purpose to be served by recording successive majorities against the Government, so long as the members of that Government could retain their offices, together with the favour of the Lieutenant-Governor, in spite of any vote which the Assembly might see fit to record. He made no remarkable speeches, and seemed rather disposed to remain in the background. It so happened that he did not again have an opportunity of winning honours in the Legislature for many years, as, in consequence of the death of the king, a dissolution of Parliament took place before the time had arrived for the meeting of another session, and Robert Baldwin was one of the many Reform candidates who were beaten at the general elections which ensued.

There are few facts worthy of record in connection with the session of 1830. In the Speech from the Throne the Lieutenant-Governor was able to announce that the revenue at the disposal of the Crown had been found sufficient to meet the requirements of the civil list, and that there still remained a considerable surplus in the Provincial Treasury. The Assembly's Address in Reply once more drew his Excellency's attention to the want of confidence felt in the advisers by whom he was surrounded. "We still feel unabated solicitude about the administration of public justice," it ran, "and entertain a settled conviction that the continuance about your Excellency of those advisers who from the unhappy policy

they pursued have long deservedly lost the confidence of the country, is highly inexpedient, and calculated seriously to weaken the expectations of the people from the impartial and disinterested justice of His Majesty's Government." The response to this intimation is probably the briefest official deliverance of the kind on record. Divested of the formal commencement, it contained exactly six short words: "I thank you for your Address." The number of Bills passed by the Assembly and rejected by the Upper House during the session was twenty-seven. In addition to these there were several Bills which originated in the Assembly, but were afterwards rejected by that House by reason of amendments made to them by the Legislative Council.*

* For the titles of these measures, see the *Seventh Report of Grievance Committee*, pp. 266, 267.

CHAPTER XI.

PARLIAMENTARY PRIVILEGE.

FOR several years before this time a quiet and almost imperceptible change had been taking place in Upper Canadian politics. On one side was the old High Tory or Family Compact party, who revelled in the spoils of office, and held the representative of Majesty in the hollow of their hands. The policy of this body was unchanged and unchangeable. The Reform party, though it had not been in existence more than six years, already began to show symptoms of want of cohesion. The men of moderate views, like the Rolphs, the Baldwins and the Bidwells, composed fully two-thirds of the entire number. The ultra-Radicals, composed for the most part of unlettered farmers and recently-arrived immigrants, began to show evidence of a desire to rally themselves under the banner of Mackenzie, who, through the combined influence of his paper and his election to Parliament, had of late come prominently before the public. A large and intelligent body of electors had however grown up within the last few years who, while they professed Conservative principles, were disgusted with the greedy, self-seeking Compact, whose practices they held in utter disdain. They held politicians of the Mackenzie stamp in still greater abhorrence, to which was added a large modicum of contempt. With the moderate Reformers, on the other hand, they had much in common. Many of them approved of the doctrine of Responsible Government, and almost all of them desired to see the end of Compact domination. At the last general election their votes had been very much divided. But they were now disposed to hold aloof from the Reformers in consequence of the latter's being nominally of the same party as the Mackenzie Radicals, who had only recently come into exist-

ence. The exercise of a little diplomacy and mutual forbearance at this time might, it is believed, have effected that union between these two classes of persons which was actually accomplished about a quarter of a century later. Such an union would have made the united party all powerful. It would have swept away the Compact, together with the long-standing abuses which had grown up under their rule, and the united party would quietly have assumed the reins of power with an overwhelming majority at its back. There would thus have been no *raison d'être* for the Radical element, which would necessarily have been absorbed, or would at least have ceased to be an important factor in political life.

These things, however, were not to be. Neither of the parties primarily interested made any advances to the other, and each was left to pursue its own line of policy. As a consequence the moderate Conservatives henceforth voted as one man. They saw the Radical element assuming an importance which, as they believed, was fraught with far greater danger to the commonwealth than was likely to arise from the continued ascendency of the Compact. They gave the official party a qualified support, merely because they regarded them as the less of two evils, and their votes at the general election of 1830 resulted in the return of a considerable majority of candidates favourable to the official body.

The Reformers could no longer hope to obtain justice, even in the Assembly, where they had exerted a predominating influence during the last two Parliaments. So long as they had had control of the Lower House they had possessed the shadow of power without the reality. Even the shadow had been better than nothing; but of this shadow they were henceforth to be deprived. They had not only sustained numerical defeat. Some of their most trusted leaders had been beaten at the polls, and were no longer able to raise their voices in Parliament. Robert Baldwin's defeat in York has already been mentioned.* His father had suffered a similar fate in Norfolk. In Middlesex John Rolph and Captain Matthews had been succeeded by Colonel Mahlon Burwell and another adherent of the Compact. Lennox and Addington had again returned Bidwell and Perry,

* *Ante*, p. 229.

but, owing to the changed complexion of the House, there was no possibility of the former's re-election to the Speaker's chair. Among other triumphs scored by the official party were the return of the Solicitor-General, Christopher A. Hagerman, for Kingston; of the Attorney-General, H. J. Boulton, for Niagara; of William B. Robinson (brother of the Chief Justice) for Simcoe, and of Allan N. MacNab for Wentworth. York still remained true to Mackenzie, and, as will presently be seen, his presence in a House composed mainly of political opponents was destined to lead to serious complications. Upon the assembling of the Legislature early in the following year, Archibald McLean, the official candidate for the Speakership, was elected by a majority of twelve votes. No adherent of the official party could have been more acceptable to the Reformers than Mr. McLean, who was a gentleman of high standing at the bar, and who personally enjoyed great popularity. He sat for the County of Stormont, which he had represented for many years, during all of which period he had maintained friendly personal relations with the members of the Opposition. Great confidence was felt in his personal integrity, and in his earnestness for the country's welfare. He had special claims to consideration, for he was a Canadian by birth, and had fought and bled in defence of his native land during the War of 1812. Still, he represented political principles which the Reform members had been expressly returned to combat, and the mere fact of his election to the Speaker's Chair by a majority of twelve votes in a House which numbered fewer than fifty members was in itself a sufficient indication that those principles were for the time unmistakably in the ascendant in Upper Canada. The proceedings of the House during the session furnished an apt and conclusive commentary upon this fact. 1831.

The session of 1831 was chiefly memorable for two things: the passing of the Everlasting Salary Bill, as it was called by those opposed to it; and the commencement of the agitation which had for its object the exclusion of Mr. Mackenzie from the Legislature.

The Salary Bill was simply a measure granting to the Provincial Government a permanent Civil List, in return for the cession by the Crown of the control of the Imperial duties. It was introduced in accordance with a suggestion from the King, but the Provincial Execu-

tive concealed certain facts in connection with it, of which the Opposition did not become aware until some time afterwards.*

By this Bill provision was made for the salaries of the Lieutenant-Governor, the three Judges of the Court of King's Bench, the Attorney-General, the Solicitor-General, five Executive Councillors, and the Clerk of the Executive Council. Reformers were strenuously opposed to the measure, which they regarded as another blow at the constitutional rights of the Assembly. It of course had the effect of rendering the Executive more independent of the Assembly, and more indifferent to its opposition, than ever. Hagerman and Boulton, whose official salaries were thereby provided for, were conspicuous above all other persons in the House in defending this measure, and in browbeating those who ventured to raise their voices against it. The Reform members found Attorney-General Boulton an infliction specially hard to bear. His predecessor, Mr. Robinson, had been a sufficiently galling yoke, but his abilities had made him respected, and he had seldom attempted to play the bully. In cases where no important party interests were at stake he had generally been amenable to reason, and had not gone out of his way to needlessly exacerbate the feelings of those who disagreed with him. Now, a different order of things prevailed. Boulton was simply unendurable. His capacity was barely such as to enable him to discharge his official functions, and what he lacked in ability he made up for in bluster. He had an abominable temper, and a haughty, overbearing manner. He was always committing blunders which he refused to acknowledge, and he roared and bullied his way through one compli-

* "When, in the year 1831, His Majesty was graciously pleased to suggest a further provision for the Civil List, which the Colonial Ministry required to be made either for seven years or for the life of His Majesty, the terms of the proposition were not candidly submitted to the Assembly, and notwithstanding the strenuous exertions of those who desired to make no provision at variance with the spirit of our constitution, the Executive influence in the Assembly succeeded in carrying a measure for a permanent and extravagant supply, popularly called 'the Everlasting Salary Bill,' while the liberal and gracious terms proposed by His Majesty on the subject were concealed and known only to those who, feeling themselves to be above responsibility, consummated a measure which has spread universal dissatisfaction and distrust. If this undue and impolitic concealment was practised from any pretended apprehension that a just provision would not be made for His Majesty's Government by his faithful Commons, there is nothing in the country to justify it, and as it encroached upon the privileges of the Legislature there is no language of censure too strong against it."—*Seventh Report of Grievance Committee*, p. xlii.

cation after another in a fashion which disgusted even those with whom he acted. During the discussion on the Salary Bill he shrieked and raved himself hoarse in denouncing what he called the "factious insolence" of the Opposition. Of his own factious insolence he seems to have been altogether oblivious. The Bill was passed, but he was not destined to a long enjoyment of the provision thereby made for the Attorney-General.

The Mackenzie persecution was a matter of greater moment than the Salary Bill, and was fated to produce results altogether unexpected by those who set it on foot. The session was not many days old when Mr. Mackenzie once more began to make himself conspicuous in Opposition. He moved a resolution denying the authority of the Executive to prescribe the religious observances of the Assembly, and affirming the right of the latter body to appoint its own chaplain. He made a forcible but exasperating speech in support of his motion, which, by vote of the House, was not submitted. He then moved that the ministers of religion of various denominations resident in York should be requested to say prayers in the House during the session. This motion was equally unsuccessful. During the debate, the Assembly was favoured with a characteristic specimen of Attorney-General Boulton's oratory. He stigmatized the assumption that the House was entitled to appoint its own chaplain as of a piece with the assumption of an assassin that he has a right to shoot down a man in the street—the right of brute force. This nonsensical tirade he shrieked out by way of peroration to a speech intended as a defence of the right of the Government in the matter of the chaplaincy. It is strange that the House should have listened to such balderdash, not only with patience, but even with apparent submission. Solicitor-General Hagerman spoke in a similar strain, but with less of irascibility. He warned the House that the Government was too powerful for them; that the Lieutenant-Governor had strong feelings on this subject, and that if they persisted in opposing his wishes confusion would ensue, and an end would be put to their proceedings.

But Mackenzie was not to be dismayed by the want of success of his exertions to popularize the religious ceremonial of the Assembly. He next moved for an inquiry into the state of the representation. Such

an inquiry was urgently needed, for the House was full of postmasters, county registrars, inspectors of licenses, and other placemen who held office at the will of the Executive, and who therefore could not be expected to be honest exponents of public opinion in their respective constituencies. Mackenzie, in the course of a vigorous speech, presented such an array of facts that a committee of inquiry was appointed. This success he followed up by a motion for an inquiry into certain pensions, fees and salaries. Then he instituted a crusade against the management of the Bank of Upper Canada, of which institution Attorney-General Boulton was solicitor. Each of these motions afforded opportunities for inflammatory speeches, in the course of which the Government and its official favourites were handled with scant consideration. The Attorney-General was several times lashed into a state of almost insane fury, and on one occasion seemed to be on the point of rushing across the floor and making a personal onslaught upon Mr. Mackenzie. The "little mannikin from York," as he was called, always had the courage of his opinions, and rather courted such an attack than otherwise. That he had many and grave faults cannot be denied, but certainly cowardice was not among the number. No more certain means of intensifying his opposition could have been found than an attempt to put him down by the strong hand. He continued to make motion upon motion and speech upon speech, and before the session was half over he had managed to cause an amount of annoyance to the Government such as they had never before known. And all this time the party to which he belonged was in an insignificant minority in the Assembly. What then was to be anticipated when the chances and changes of time should once more place that party in the ascendant there?

In former times it had been possible for the official party to rid themselves of a troublesome opponent upon any slight pretext. Why not now, when the Assembly was well-nigh as obedient as the Upper House, and when some of the ablest members of the Reform party had ceased to occupy themselves with public affairs? Certainly there had never been a time when suppression was more imperatively required, for did not this man Mackenzie spout something very much like democracy in their very faces? Had he not made several speeches in the House

which had aroused a spirit of inquiry? If he were allowed to continue, was it not inevitable that some of his waspish stings must take serious effect?

Prosecutions for libel had become unpopular. The case of Francis Collins had aroused such a clamour that it was not deemed wise to try further experiments in that direction. In April, 1828—about the same time when measures had been instituted against Collins—an indictment for libel had actually been laid against Mackenzie for a paragraph published in the *Advocate*, in which the Crown lawyers and other supporters of the Government had been referred to in contumelious terms, and wherein a hope had been expressed that the constituencies returning certain Tory members to Parliament would clear the Assembly of "the whole of that ominous nest of unclean birds."* But the Attorney-General, after keeping the prosecution impending over the defendant's head for many months, had seen fit to abandon it. The times, in fact, had ceased to be propitious for libel prosecutions, and some other way out of the difficulty had to be found. The device actually hit upon to get rid of Mackenzie's opposition in the Assembly was worthy of the minds which had plotted the ruin of Captain Matthews, Justice Willis and Francis Collins. Mackenzie, who had the contract for printing the journals of the House, and who generally had a number of copies of those journals on hand, had distributed a hundred and sixty-eight of them throughout some of the constituencies just prior to the last general election. This had been done at his own expense, and in the interest of the Reform candidates; for he believed that no more effective campaign document could be devised than a truthful record of the proceedings in the House. But as strict matter of Parliamentary law he had been guilty of a breach of privilege, no one having a right to publish reports of the proceedings of the Houses without authority. The existence of such a rule is perhaps salutary, as there are conceivable cases in which it would be inexpedient to allow such publication. But, as everybody knew, Parliament had long been accustomed to wink at perpetual violations of this rule. Newspapers all over the world had been permitted, and even encouraged, to transgress it. Some of the leading organs of pub-

* See *The Colonial Advocate* of April 3rd, 1828.

lic opinion in different parts of the world had built up their reputations mainly by the fulness and accuracy of their reports of Parliamentary proceedings. Nothing can be more certain than that there would have been no talk about enforcing the obsolete rule at this time but for the fact that it seemed to afford a pretext for punishing the man whom the Government party wished to destroy. The attempt to enforce it was not a success. The motion to that end was made by Allan MacNab, and was to the effect that Mackenzie had abused the trust reposed in him as the printer of the journals, by distributing portions of the same for political purposes, and among persons not entitled to copies thereof, thereby committing a breach of the privileges of the House. The junior member for Wentworth thundered with tremendous vehemence in support of his motion. To judge from his language, his soul had been stirred to its nethermost depths by this lamentable violation of Parliamentary privilege, which he characterized as a species of treason. Hagerman and Boulton followed in the same strain, the latter waxing almost pathetic in his expressions of devotion to the British constitution. But their exertions were ineffectual. The House, subservient though it was, was not to be coerced into supporting a motion which, if carried, would almost certainly be converted into a basis of attack on persons who were favourable to the Administration. A majority of the members foresaw that if Mackenzie were punished on such a pretext, his fellow-workers in the Assembly would not fail to institute measures against the publishers of various newspapers throughout the land who had been in the constant habit of reporting the proceedings in Parliament without leave. Only fifteen members voted for MacNab's motion, while twenty recorded their votes against it, and among the latter were several of the most redoubtable Tories in the House. The organizers of the attack perceived that they had made a false move, and withdrew their forces for a fresh assault in a different quarter.

The opportunity for a fresh attack did not present itself until the following session. Meanwhile, Mackenzie occupied himself in turning his notoriety to account, and in developing his policy of agitation. He resolved upon getting up a series of petitions to the King and the Imperial Parliament, calling attention to the various grievances wherewith the

inhabitants of the Province were burdened, and praying for redress. During the summer he carried out his project by organizing a series of public meetings in some of the most populous cities and towns of the Province, at each of which a petition was adopted and numerously signed. It is said that the aggregate number of signatures obtained exceeded 24,500. The agitator's success encouraged him to persevere in the course he had adopted, and when Parliament re-assembled in November he was ripe and ready for the fray that was sure to follow. The assault against him now took the shape of a charge of gross, scandalous and malicious libel, intended and calculated to bring the House and the Government of the Province into contempt, and to excite groundless suspicion and distrust in the minds of the inhabitants, thereby constituting a breach of privilege. The matter complained of was embodied in two articles published in the *Advocate* subsequent to the opening of the session, and both publication and authorship were admitted by Mackenzie. One of the articles was a sharp criticism on the manner in which the House had treated a petition from certain inhabitants of Vaughan. The other was a well-merited tirade against the local Executive, which was unfavourably contrasted with that of the sister Province. Neither of them was grossly abusive, nor even unfair. They were indeed exceptionally favourable specimens of the Mackenzie style of journalism, and were incomparably milder than articles which may constantly be seen in the Canadian party journals of the present day.

Being called upon for his defence, Mackenzie addressed the House with more than his wonted ability. He exposed the flimsiness of the charges against him, and the gross partiality of the proceedings. But the House was in search, not of justice, but of a victim, and neither the eloquence of a Demosthenes nor the reasoning powers of a Pascal would have availed aught with that hostile majority. Attorney-General Boulton, in the course of the discussion, delivered himself of a tempest of characteristic abuse against the accused, to whom he referred as a reptile. Solicitor-General Hagerman could always be depended upon as a good second in such emergencies, and followed up by referring to Mr. Mackenzie as a spaniel dog. The House seemed to accept these choice Parliamentary epithets with approval. They came from an

official source, and it is so easy to be strong upon the stronger side. Little chance was there for the maimed and bleeding under dog in the fight among that crowd of venal and merciless sycophants, some of whom had libelled the late Assembly in terms thrice as gross as any that had been employed in the articles in question. The *tu quoque* argument is not generally admissible in legal investigations, but surely it might have been permitted to have some weight with the judges—who were likewise the jurors—in this case. Neither that nor any argument appears to have been seriously considered. The usual forms were gone through, in order to preserve some appearance of conventional propriety, but a verdict of guilty was altogether certain and beyond peradventure from the moment when the indictment was laid. By a vote of twenty-seven to fifteen it was resolved that Mackenzie was guilty of the libel charged against him. By a vote of twenty-six to fourteen it was resolved that he was guilty of a high breach of the privileges of the House. And by a vote of twenty-four to fifteen, it was resolved that he be expelled therefrom.

To characterize these proceedings as a series of shameful abuses of power is certainly not to exceed the bounds of moderation. The persons responsible for them must stand tainted at the bar of history for all time to come. It is far from desirable to perpetuate the bitterness of the past, but it is possible for oblivion to be too charitable. It is well that those who are accustomed to speak of "the rebels" of 1837 with contumely and indignation should bear in mind against whom and what it was that they rebelled. The expulsion of Mackenzie from the Assembly was not the greatest act of tyranny to which the people of Upper Canada were compelled to submit in the far-away days that are gone; but the nature of the abuse was such that it awoke widespread alarm, and gave rise to ominious forebodings. It indicated that constitutional opposition to the Government was no longer safe in the Assembly, as it had been during the two preceding Parliaments. It indicated that nothing approaching to a fair trial was to be had, even from the High Court of Parliament, for a politician who dared to criticize the official methods of transacting the public business. Growls of discontent were heard from all over the County of York, whose representative was treated

with such ignominy. People were heard to express an opinion that Upper Canada was no longer a fit place of abode for free men and women.

The public indignation found expression in several petitions, addressed to the Lieutenant-Governor by electors in York and elsewhere, in which his Excellency was asked to "dismiss a House tainted with the worst vices of judicial partiality." A deputation, consisting of more than nine hundred persons, called at Government House to present one of these manifestations of popular sentiment. His Excellency could not well refuse to receive a respectfully-worded petition, but his reply was so curt and unsatisfactory as to amount to positive insolence. "Gentlemen," said he, "I have received the petition of the inhabitants." And with this wholly unnecessary item of information the deputation was compelled to withdraw. So utter a disregard for the expression of the opinion of a considerable body of the inhabitants was without precedent in the annals of the Province. That the prayer of the petition would be granted, or even that it would be taken into serious consideration, was hardly to be expected. Its very nature forbade any such expectation. But, considering the number of names appended to it, it certainly merited a serious response, in which light the actual rejoinder could not be regarded. The proceeding showed not merely indifference, but contempt; and thenceforward Sir John Colborne was as cordially hated by the Reformers of Upper Canada as ever Sir Peregrine Maitland had been.*

The efforts of the faction to ruin and humiliate Mackenzie had the effect which such treatment always produces in communities where the inhabitants have been indoctrinated with ideas of fair play and equal rights. It made a popular hero of one who, if the truth must be told, had very little of the heroic in his composition. Had the Government been wise enough in their own interests to let him have his say in the Assembly, he would soon have found his proper level, and would have

*I can find no confirmation of the statement made by Mackenzie, and re-echoed by subsequent writers, about the excessive fears of the Government at this juncture, and the preparations made by them to resist an uprising of the people. There were no grounds for any such fears, nor for any anticipations of an uprising. The people were long-suffering, and were by no means ripe for revolt.

ceased to carry any weight there.* He would undoubtedly have raised a good deal of temporary excitement by unearthing abuses, and by vituperating persons whom he disliked. But he could never have seriously threatened the supremacy of the Compact, for the very sufficient reason that he could not command the sympathies or respect of the leading spirits of his own party. Rolph, the Bidwells and the Baldwins had by this time come to rate Mackenzie at about his true value. They recognized his talents, which were many and considerable. He had a clear head for accounts, and was full of suggestive ideas about matters of finance. Some of these ideas were unpractical, and even chimerical, but anyone capable of separating the wheat from the chaff could learn much from him, and could render his suggestions available. He was an excellent subordinate, useful on committees, and active in the management of details. He also had his uses as the conductor of a public press, though, owing to the erratic and ill-balanced mind of its editor, the *Advocate* was in some respects a source of weakness rather than of strength. His influence was pretty much confined to the farmers and mechanics of that portion of the country where his paper was chiefly circulated; and even there his influence would never have been anything like so great as it actually became had it not been for the persecution to

* If any evidence were needed of this obvious truth, it is furnished by Mackenzie's career in the Canadian Parliament after his return from exile. He was there brought into contact with politicians of a succeeding generation, most of whom knew him by tradition only. His misfortunes, and the manifold sufferings he had been compelled to endure, impelled most of his contemporaries to regard him with a large measure of forbearance, and he was permitted to indulge a license of speech which would not have been tolerated in any other member. He adopted precisely the same *rôle* as of yore, and delivered himself with great vehemence on matters which he did not understand. The inevitable result was that the Assembly soon ceased to attach any weight to his opinions. He had lived long enough to repudiate many of his old doctrines, and to eat many of his past words. His views on Tuesday were frequently the very opposite to what they had been on Monday, and neither were any indication of what they would be on Wednesday. Members ceased to attach any importance to his statements, or to think of them as calling for serious consideration. He came to be regarded as a sort of unlicensed jester who might be permitted to amuse the House by his antics when there was no pressing business on hand; but as to any real influence, he had no more than the junior messenger. It took him several years to find this out, and when it was brought thoroughly home to him he resigned his seat. Had the Family Compact politicians of fifty to sixty years ago been as wise in their generation as the members of the Assembly during the Fourth, Fifth and Sixth Parliaments of United Canada, they would have ceased to defend the indefensible, and would have let Mackenzie alone. They might then have held the reins of power for ten—or possibly twenty—years longer; but the day of reckoning, when it came, would probably have been a darker one.

which he was subjected. Over and beyond, he could not be said to have any distinctive *locus standi* in the Reform party. Of statesmanship, properly so called, he had nothing beyond the most misty conception. The structure of his mind prevented him from seeing a question in its various aspects, and in judging of future political events he was much more often wrong than right. That he was honestly desirous of advancing the cause which he had espoused there seemed no good reason to doubt, but it was evident to those who were brought into intimate relations with him that the fiery zeal which he displayed was made up at least as much of hatred of his foes as of any overpowering enthusiasm for Reform. Another quality which seriously interfered with his usefulness was his exceeding want of discretion. He seemed to be utterly incapable of keeping his own counsel, and a secret once told to him was a secret no longer. His rashness and impetuosity were proverbial, and were perpetually involving him in disputes, not only with enemies but with friends.

It was surely a short-sighted policy which gave to a man so constituted a factitious importance, and which made him for some years the most notorious personage in Upper Canada. The treatment he had received aroused popular sympathy on his behalf, and preparations were made to return him again for the County of York by an increased majority. When the new election was held, on the 2nd of January in the following year, a long procession of sleighs escorted him to the polling-place, which was the Red Lion Tavern, on Yonge Street. 1832. Two thousand persons assembled to witness the triumph of "the people's friend." An Oppositionist was nominated, but as he received only one vote during the hour and a-half which elapsed after the opening of the poll, he abandoned the contest, and Mackenzie's triumph was assured. The close of the poll was followed by the presentation of a gold medal by his constituents, as a token of their approbation. A number of sleighs were then formed in line and paraded down Yonge Street, and thence past Government House and down to the Parliament Buildings. The foremost sleigh was decorated with enthusiastic mottoes painted on calico, and cheers for the successful candidate rent the air as the procession passed along the principal thoroughfares. All this popular adulation was grateful to Mackenzie's soul. He was in his element.

There is no need to linger over this part of the narrative. Parliament was still in session, and the Assembly were resolved that, no matter what the electors of York might think proper to do, Mackenzie should not sit in the House. A new pretext for his expulsion was found in an article of which he avowed himself to be the author, and which appeared in the *Advocate* of the 5th of January. This article was a true and by no means intemperate recital of certain well-known facts as to certain measures which had been passed by the Assembly. It was notwithstanding adjudged, by a vote of twenty-seven to nineteen, to be a libel on the House, and a high breach of its privileges; and it was further resolved that Mr. Mackenzie be expelled the House, and declared unfit and unworthy to hold a seat therein during the existing Parliament. But his constituency stood loyally by him, and again re-elected him by an overwhelming majority within a few weeks after this second expulsion. His popularity reached a higher point than ever. Public meetings were held all over the Province to protest against the measures which had been adopted towards him, and petitions to the King and the Imperial Parliament were again circulated and signed by great numbers of the inhabitants. These meetings proved so successful that the Government party deemed it wise to take some steps of a similar character on their own behalf, with a view to checkmating the operations of the Reformers. Nothing is more easy than to obtain signatures to petitions, which are frequently signed without being read. Opposition meetings were held by supporters of the Government, at which excuses were attempted to be made for the expulsions of Mackenzie, and at which counter petitions to the King and Parliament of Great Britain were signed by many thousands of persons. One of the meetings was held at Hamilton on the 19th of March, and Mackenzie attended it by special invitation. That same night an attack was made upon him by certain myrmidons of the official party, who kicked and beat him severely. At another meeting held at York four days later the proceedings became so riotous that the Sheriff professed himself unable to preserve the peace. An attack was made upon the office of the *Advocate*, the windows of which were broken. The town remained in a very disturbed state throughout the ensuing night, and a large proportion of the inhabitants

did not venture to seek repose. Mackenzie deemed it prudent to retire into the country for several weeks; and almost immediately after his return to town he set off on an important mission to England. It was considered that the most effectual method of impressing the subject-matter of the various Reform petitions upon those to whom they were addressed would be to send Mackenzie himself across the Atlantic to present them, and to urge the many much-needed colonial reforms upon the attention of members of the British House of Commons. It was believed that he could accomplish the various objects of his mission and return in time to take his seat in the Assembly at its opening towards the close of the year. He deputed the editing and publication of the *Advocate* to other hands, and sailed from New York on the 1st of May. In due course he reached his destination, and put himself into communication with Hume, Roebuck, Cobbett, O'Connell, and other eminent persons of Liberal proclivities, including Lord Goderich, the Colonial Secretary.

The reader hardly needs to be informed that this was a momentous period in the history of England. It was the epoch of Reform, and the nation was in a state of ferment. During the brief space while Mackenzie had been crossing the Atlantic great events had taken place. Earl Grey's ministry had resigned; Sir Robert Peel had refused to join the Duke of Wellington in an attempt to form a Government; and Earl Grey had resumed office, armed with the King's written authority to Lord Brougham and himself to create as many peers as might be necessary to ensure the passing of the Reform Bill. This authority it did not become necessary to exercise. The titled aristocracy bowed to the unconquerable will of a great and thoroughly-aroused people, and Mackenzie reached London in time to hear the third reading of the Great Bill in the House of Lords. He was soon afterwards received at the Colonial Office, not as the representative of any particular class of Canadian politicians, but as a person interested in Canadian affairs, and able to afford much valuable information concerning them.* He then

* Lord Howick, writing on behalf of the Colonial Secretary, under date of June 23rd, 1832, in reply to Mackenzie's application for an interview, informed the applicant that although the Secretary was ready to hear any observations which he (Mackenzie) might have to offer upon the affairs of Upper Canada, as an individual interested in the welfare of that Province, and as a

found that the efforts of the official party in Upper Canada to render his mission inoperative had not been barren of results. Petitions had been received at the Colonial Office in which entire satisfaction was expressed with the existing laws and institutions of the Province; and the signatures thereto slightly exceeded in number those appended to the petitions of which he himself had been the bearer. He however devoted himself with characteristic energy to the presentation of his case, and prepared a memoir wherein all the most serious grievances of the Upper Canadian people were set forth in detail. In this document the writer adopted a discursive and rhetorical style which, as the Colonial Secretary justly remarked, were "singularly ill adapted to bring questions of so much intricacy and importance to a definite issue." The facts were nevertheless pretty comprehensively embodied, and were generally speaking of such a character as to tell their own story. The perusal of the memoir seems to have produced an impression upon the Colonial Secretary's mind. He wrote a long and elaborate despatch to Sir John Colborne, in which the weak points of Mackenzie's arguments were exposed with cutting severity, and wherein it was evident that very little weight had been attached to most of his representations; but at the same time certain concessions to popular opinion were plainly hinted at. When this despatch was submitted to the Legislative Council and Assembly of Upper Canada at the ensuing session it was treated with scant respect. The Upper House formally declared that it did not regard it as calling for serious attention, and returned it to the Lieutenant-Governor. The Assembly discussed the propriety of sending it back, but finally resolved not to do so. Both the Crown Law Officers made hot-headed speeches on the subject, and referred to the Colonial Secretary in the most contemptuous terms.

member of the Assembly, yet that the Secretary could not recognize him as being deputed to act for any other persons, nor could he enter into any discussion with him on the measures which His Majesty's Government might think it right to pursue. "The views and intentions of His Majesty's Government with respect to the affairs of the Province," wrote his Lordship, "can only be made known to the people of Upper Canada through the medium of the Governor or of the Legislature; it is to one or other of these authorities that any complaints which individuals may have occasion to make should properly be addressed; and if the course pursued by the Executive Government should be such as to give just ground for dissatisfaction, the inhabitants have, by their Representatives, the means of bringing their grievances under the immediate attention of His Majesty." The full text of the letter will be found on pp. 191, 192 of the *Seventh Report of Grievance Committee.*

Meanwhile, Mackenzie, who still remained in England, was in his absence expelled from the Assembly a third time. On this occasion there was no preliminary attempt to convict him of any fresh libel or breach of privilege. The Law Officers of the Crown simplified the proceedings by declaring that the House had a right to determine as to the eligibility of members, and a resolution to that effect was moved and carried. It was then resolved that the person returned for York was the same William Lyon Mackenzie who had been twice expelled the House and declared unfit to hold a seat therein; and that by reason thereof the said Mackenzie could not sit or vote in the House as a member thereof. He was then expelled for the third time, and a new writ was issued for the County of York. The inhabitants of that constituency felt so much aggrieved, and gave such loud-mouthed expression to their dissatisfaction, that no candidate hostile to Mackenzie dared to present himself at the ensuing election, and the choice of the people was returned by acclamation.

The part taken by the Law Officers of the Crown in these repeated expulsions was not acceptable to the Colonial Office. Neither was the contemptuous manner in which they had seen fit to refer to the Secretary's despatch written after the perusal of Mackenzie's memoir. A missive on the former subject had been sent to Sir John Colborne some months before the commencement of the session of 1832-3, the contents of which seem to have been promptly communicated to Messieurs Boulton and Hagerman.* Notwithstanding that communication, those gentlemen had seen fit, soon after the opening of the session, to take a leading part in another expulsion, and to make contemptuous references to the conduct of the Colonial Secretary himself. The Attorney-General had expressed an opinion that the Secretary might have found something better to do than to sit down and answer "Mackenzie's rigmarole trash." Solicitor-General Hagerman had remarked that the Secretary had stultified himself by noticing statements which rested on no better authority than that of

* Mr. Boulton denied, at least by implication, that any such communication had been made to him. See his letter dated April 30th, 1833, and published in the *Courier* of the following day. But it is certain that the contents of the missive had been made known to Mr. Hagerman, and it is hardly conceivable that he would have failed to communicate to his colleague matters of such vital importance to their common welfare.

a person who had been twice expelled the Assembly, and who had been declared unfit to sit therein in consequence of his having "fabricated and reiterated libels of the grossest description." Lord Goderich signified his disapprobation of this conduct in the most emphatic manner by dismissing the two virulent critics from office. Their dismissal was effected by a despatch to Sir John Colborne dated March 6th, 1833. "By the accounts I have lately received of the proceedings of the Legislature of Upper Canada," wrote his Lordship, "I have learnt that the Attorney and Solicitor-General of that Province have, in their places in the Assembly, taken a part directly opposed to the avowed policy of His Majesty's Government. As members of the Provincial Parliament, Mr. Boulton and Mr. Hagerman are of course bound to act upon their own view of what is most for the interest of their constituents, and of the colony at large. But if, upon questions of great political importance, they unfortunately differ in opinion from His Majesty's Government, it is obvious that they cannot continue to hold confidential situations in His Majesty's service without either betraying their duty as members of the Legislature, or bringing the sincerity of the Government into question by their opposition to the policy which His Majesty has been advised to pursue." It was intimated that the Law Officers of the Crown could not be permitted to impede the Government policy, and that in order that those gentlemen might be at full liberty to follow their own judgment, they were to be relieved from their offices.* 1833.

When this despatch reached York, towards the end of April, its contents were communicated to Attorney-General Boulton. Mr. Hagerman had started for England a short time before on a mission connected with the Clergy Reserves, and, as was said,† in order to obtain a permanent appointment to a judgeship. He learned of his dismissal immediately upon his arrival in London, and lost no time in putting himself in com-

*The full text of the despatch will be found on p. 295 of the *Seventh Report of Grievance Committee.*

† "We have been very credibly informed that, on account of the extent of the settlements and consequent increase of court business, it was thought expedient by our wise ones that a fourth judge was necessary, and that he [Mr. Hagerman] had obtained (previous to his leaving here) a recommend from the other judges for himself to be appointed to the new created situation."—*Colonial Advocate*, Thursday, May 2nd, 1833.

munication with the Colonial Minister. An important change had recently taken place at the Colonial Office. Lord Goderich had vacated the Secretaryship, and had become Lord Privy Seal, being at the same time created Earl of Ripon. He was succeeded as Colonial Secretary by Mr. Stanley, afterwards Earl of Derby, who had been Secretary for Ireland, but had aroused such hostility against himself among O'Connell's followers by his stand on the Irish question* that it had been deemed prudent to find another portfolio for him. He now admitted Mr. Hagerman to an audience, and was so won upon by that gentleman's specious representations that he restored him to his stewardship. Accordingly, although he had been only moderately successful in carrying out the specific objects of his mission, Mr. Hagerman returned to Upper Canada in triumph; and he was greeted, upon his arrival, with a tempest of acclamation from the Tory press.

Mr. Boulton, upon receiving from the Lieutenant-Governor's secretary an intimation of his dismissal, raised a howl of indignation against Lord Goderich and the Imperial Government generally. It was notorious that he controlled the columns of *The Upper Canada Courier*, a newspaper published at York in the interests of the official party, and edited by Mr. George Gurnett. That paper, in its next issue, contained an article more scurrilous and abusive than had been either of those articles in the *Advocate* on the pretext whereof Mackenzie had been expelled from the Assembly. It reeked with scurrility and disloyalty from beginning to end. It alleged that the well-affected people in the country were more than half alienated from the Home Government, and that they began to cast about in their mind's eye for some new state of political existence. There was more to the same purport. Some new state of political existence! This was a pretty strong suggestion of rebellion! And it emanated from the organ of a faction in whose mouths the word "loyalty" was ever present; whose "loyalty" had for years been vaunted from every hustings, and who, so long as the tide ran in their favour, had preached doctrines worthy of the middle ages about submission to the higher powers. How changed was the tone now that there seemed to be some prospect of their being

* It was at this time that Mr. Stanley, by his fiery speech against O'Connell, won for himself the sobriquet of "the Rupert of Debate."

placed upon the same footing, and judged by the same standard as their neighbours. If they did these things in the green tree, what would they do in the dry? What might have been expected from them if they had been subjected to such injustice and ignominy as the party to which they were opposed? Here was a faction professedly ready to throw off their allegiance because two of their number had been deprived of offices which they had notoriously prostituted and disgraced.* Here was a "well-affected" people "casting about" in their "mind's eye" for a new state of political existence, because two of the most corrupt, brazen and audacious officials in the colony were no longer to be allowed to pervert legislation under the mantle of Imperial countenance. And they were as little disposed to brook interference with their pecuniary interests by the Colonial Office. Early in the following year they gave utterance to rank treason in consequence of the threatened disallowance by the Imperial Government of certain Bank Charter Acts passed by the Provincial Parliament.† A pearl is proverbially uncomely in the snout of a swine; and truly the word "loyalty" was never more absurdly out of place than when pronounced by such lips.

The ex-Attorney-General followed the ex-Solicitor-General to England, where he represented his case to the new Colonial Minister. After giving much attention to the matter, Mr. Stanley expressed himself as satisfied with the explanations which had been offered. The explanations seem to have chiefly consisted of solemn declarations on

* Henry Sherwood, who had by this time attained to a prominent place in the ranks of the official party, was especially loud in his denunciations of the British Government for dismissing Boulton and Hagerman. According to a correspondent of the *Colonial Advocate*, he declared, in the course of an ordinary conversation, that if such proceedings were to continue, he, for his part, did not care how soon the British authority was superseded by a republican one.—See letter of "John Bull," on first page of the *Advocate* of December 14th, 1833.

† They were equally intolerant of opposition from their own adherents when their pecuniary interests were at stake. In December, 1833, the Hon. John Elmsley, who had been called to the Executive Council three years before, was forced to resign his seat in that body because he could not act independently there. In his letter of resignation, which is dated "Holland House, York, December 3rd, 1833," he says: "Since I have assumed the duties of that high office [*i.e.*, the office of an Executive Councillor], I find that I cannot fearlessly express my real sentiments and opinions, if opposed to the Government for the time being, without incurring the risk of dismissal from that Honourable Board, which constitutes my inability to advance the public good. I have therefore deemed it expedient most respectfully, but reluctantly, to tender the resignation of my seat in the Executive Council."—See evidence of the Hon. Peter Robinson, in Appendix to *Seventh Report on Grievances*, p. 91. See also p. xxvii of the Report itself.

the part of Mr. Boulton that he had been insufficiently informed of the views of the Home Government, and that he had had no desire whatever to set up his own will in opposition to those views.* He doubtless professed his readiness to go any length in the way of sycophancy which might be required of him for the future. It was however impossible to restore him to the Attorney-Generalship, as a successor to that office had been appointed in the person of Mr. Robert Sympson Jameson,† an English barrister, who had actually sailed from Liverpool for Canada, and was already well on his way thither. Mr. Boulton was informed that he should have the first good appointment at the Secretary's disposal. His success was even greater than that of his recent colleague, for on the 17th of June he was notified that the King had been graciously pleased to accept of his further services, and that the Colonial Secretary had His Majesty's commands to offer him the appointment of Chief Justice of Newfoundland, which situation had recently become vacant.‡ This appointment was fully approved by the Earl of Ripon, under whose advice he had been dismissed from the Attorney-Generalship of Upper Canada,§ but who had been induced to change his views after hearing Mr. Boulton's explanations.

Mr. Boulton's triumph, however, was to be followed by a downfall more humiliating than that which he had so narrowly escaped. He repaired to Newfoundland in the autumn, and entered upon the performance of his duties. He had not been long in his new position before he had aroused a feeling of disgust and alarm on the part of a large proportion of the public and the profession. He began by being arbitrary, tyrannical and unjust. He proceeded from bad to worse, until it was found impossible to permit him to retain his position.‖ There is no need to follow the proceedings adopted against him. He was not finally

* See *Case of the Honourable Henry John Boulton, Chief Justice of the Island of Newfoundland*, etc.—being a report of the Case before the Privy Council—p. 3.

† This was the husband of the accomplished Anna Jameson, whose brilliant art criticisms are among the most readable things of their kind in the English language, and whose Canadian sketches have made her name well known in this country.

‡ *Case of the Hon. H. J. Boulton*, etc., p. 3. § *Ib.*, p. 4.

‖ Full particulars of his misconduct may be found in the work already quoted from.

got rid of until 1838, when he returned to Upper Canada, and once more entered political life as member for Niagara. The Home Government turned a deaf ear to his perpetual applications for employment, and would have nothing more to do with him. Some years after the Union of the Provinces, finding that he had nothing to hope for from the Conservative party, who refused to elevate him to a judgeship, he abandoned them, and for some time acted with Mr. Baldwin. It seems almost cruel to record the fact that he supported Responsible Government and the Rebellion Losses Bill.

CHAPTER XII.

DISFRANCHISEMENT.

MACKENZIE remained in England much longer than he had anticipated, and did not return to Canada until towards the end of August, 1833. He was absent in all nearly sixteen months, which was considerably longer than was necessary for the accomplishment of the objects of his mission. He doubtless enjoyed life in the metropolis, and was loth to relinquish it.* His mission had not been wholly fruitless, for his representations at the Colonial Office had led to the writing of Lord Goderich's despatch already referred to, by which the faction in Upper Canada were led to see that they would for the future be compelled to act with somewhat more of circumspection. Several much-needed suggestions were made in the despatch on subjects of practical import-

*Prior to his departure from Canada he travelled about here and there through the country to collect subscriptions towards the expenses of his journey. He met with but slender success. After his return he made further efforts in the same direction, and with similar results. Persons who professed much zeal for Reform were slow to put their hands in their pockets for such a purpose, and he succeeded in collecting only about £150. It should however be remembered that most Upper Canadian Reformers in those days were poor. Mackenzie's actual disbursements during his absence are stated by Mr. Lindsey to have been £676 (*Life of Mackenzie*, vol. i., p. 287), but a considerable part of this sum was expended on a visit to Scotland. It is probable, too, that the amount stated includes the cost of publishing *Sketches in Canada and the United States*, which must have been considerable. It is fairly to be inferred from Mr. Lindsey's account that Mackenzie was himself compelled to pay the difference between £150, the amount collected from subscribers, and £676, the amount actually expended. "The people's agent," he informs us, "was left to bear the greater part of the expense." This, no doubt, was Mr. Lindsey's belief when his book was written; but nothing could be further from the fact. It would be much nearer the truth to say that Mackenzie enjoyed a sixteen months' holiday at the expense of his political friends, for all, or nearly all the money expended over and above the £150 was contributed by Dr. Morrison, Dr. Rolph, David Gibson, the Lesslies, Shepards, and others; and as no portion of the money so contributed was ever repaid, they, and not Mackenzie, were compelled to bear the loss. The implied slur upon the Reform party is therefore wholly undeserved.

ance—among others as to the remuneration of members of the Assembly representing Town constituencies; as to the extension of the franchise to persons who, by reason of their religious scruples, could not conscientiously take the prescribed oath; as to the repeal of the law disqualifying British subjects from voting at elections till the expiration of seven years after their return from a residence in a foreign country; and as to the interference of ecclesiastical Legislative Councillors in secular matters.* Mackenzie was also entitled to claim credit for obtaining important reforms in the management of the Provincial Post Office. He had brought the affairs of the Province conspicuously before the minds of several eminent public men, whose interest in Canada had thus been aroused, and who were thenceforth able to display some familiarity with Canadian questions as they came up for discussion in the House of Commons. During his stay in London he had published a duodecimo volume, extending to 504 pages, entitled "Sketches in Canada and the United States," in which a good many Provincial abuses had been specified. The information contained in this work had been thrown together in a higgledy-piggledy fashion, and it could not be said to have much real value, more especially as many of its statements were inaccurate, and must have been known to be so when they were written.† Still, it probably had some effect in seconding the author's efforts to attract attention to himself and the interests which he represented. He had moreover acquainted the Colonial Secretary with matters which

* His Lordship expressed himself with much clearness on this subject. "Whether," he wrote, "even under this restriction [*i.e.*, the restriction of non-interference in secular affairs], their holding such seats is really desirable, is a question upon which I am fully prepared to listen with the utmost attention to any advice which I may receive from yourself, from the House of Assembly, or from any other competent authority. I have no solicitude for retaining either the Bishop [McDonnell] or the Archdeacon [Strachan] on the list of Councillors, but am, on the contrary, rather predisposed to the opinion that by resigning their seats they would best consult their own personal comfort and the success of their designs for the spiritual good of the people. But any such resignation must be voluntary, since the office is held for life; and were it otherwise, no consideration could induce me to advise His Majesty to degrade the Bishop or the Archdeacon from the stations they occupy, except upon the most conclusive proof of misconduct." One might not unreasonably construe these words into a pretty broad hint to Bishop McDonnell and Dr. Strachan that they ought to resign.

† The London *Morning Herald* of July 11th, 1833, correctly characterized it as "the oddest mixture of slander and truth, of knowledge and ignorance, of bold assertion and vacillating opinion."

could not possibly have been clearly explained otherwise than orally. It was tolerably certain that information furnished by him had led to the dismissal of Boulton and Hagerman, a proceeding which had wonderfully exhilarated his mind; and his depression had been correspondently deep upon learning that the one had been promoted and the other reinstated. He had hoped to see Mr. Rolph appointed to the Solicitor-Generalship, and, if his word is to be credited, he really seems to have had some grounds for believing that such an appointment would be made.* He afterwards declared that he had "good reasons for believing" that Mr. Rolph's appointment had actually been made out and transmitted to Canada, but that Sir John Colborne and Chief Justice Robinson had prevented it from taking effect.†

As has already been seen,‡ Mackenzie, during his absence in England, had once more been elected to represent the County of York in the Assembly. Upon the first meeting of Parliament after his return he presented himself as a member. There was however a persistent determination that he should not be permitted to take his seat. The hostile majority in the House professed to believe that they had a right to exercise a discretion as to who should be permitted to sit therein. Mackenzie, they alleged, had libelled the House by libelling a majority of its members, and he had neither made nor attempted to make any reparation or apology. The Clerk, acting most probably on instructions, refused to administer the oath to him. A resolution was adopted that he should not be permitted to sit or vote as a member during the session, and a writ for a new election was ordered. Again did he return to his constituents, and again was he returned without opposition. The electors of York were by this time heartily tired of the farce, the perpetual re-enactment whereof had

* "Mr. Rolph will, we have no doubt, have the offer of the Solicitorship, but whether he will accept it is a matter more doubtful; though we think he possibly may, provided he is to be associated in the administration with men of a liberal policy; otherwise we are of opinion he will decline. Such an appointment would certainly do credit to our country, and we hope he (Mr. Rolph) will accept the appointment if offered—that is, if he can consistently do so."—*Colonial Advocate*, Thursday, May 2nd, 1833. See also the *Advocate* for October 3rd, 1833.

† See *An Account of the Dismissal of the Attorney and Solicitor-General from Office, and of the Re-appointment of Mr. Hagerman*, written by Mackenzie for the General [Reform] Committee at York, and published in the *Advocate* for Thursday, August 29th, 1833.

‡ *Ante*, p. 247.

the effect of partly disfranchising them by leaving them with only one representative in the Assembly instead of two. They were nevertheless fully resolved not to yield their undoubted rights without some further assertion of them. The member of their choice was under no legal disability. They were advised that there was no constitutional justification for the action of the Assembly. They declared that they owed it to themselves and those who were to come after them not to submit tamely to injustice of such a nature. The election being over, a considerable body of them escorted him to the Houses of Parliament. But a short time had elapsed since the last expulsion, and the Legislature was still in session. The members of the Assembly stared in astonishment at the sudden and altogether unlooked-for incursion of strangers, who poured into the gallery and into the space below the bar, where they were permitted to intrude themselves, and where Mackenzie presented himself to take the oath. Those who could not find room inside remained without in the lobbies. In a few moments a lull occurred in the proceedings of the House, whereupon burly Peter Perry rose in his place and announced that he had a petition to present on behalf of the inhabitants of the County of York. The contents of the petition were not of a nature to render it acceptable to a majority of the members. It referred to Mackenzie's expulsion, and prayed that that indignity might not be repeated. There was a very general feeling among the supporters of the Government that the House ought not to receive such a petition, and several of them gave utterance to their opinions on the subject. Allan MacNab expressed himself to this effect with his customary emphasis, and was greeted with a storm of hisses from the York electors in the gallery. Ominous sounds! The House could not be expected to tamely brook such a manifestation, and an order was given to clear the gallery. While the order was being obeyed, the Sergeant-at-Arms approached Mackenzie where he stood below the bar, and directed him to leave. Mackenzie replied to the effect that he had a right to be there, and that he intended to remain. The door was then opened by the Sergeant-at-Arms, who proceeded to eject Mackenzie by force; but before he could carry out his purpose a rush was made from the adjacent lobby. The door was promptly closed and barricaded, but not until several of the invaders

had effected an entrance. The excitement was intense, and for some minutes the proceedings of the House were suspended. When quiet had been in some measure restored, the Speaker directed the Sergeant-at-Arms to clear the space below the bar of strangers. That functionary again ordered Mackenzie to leave, and he received the same reply as before. This was communicated to the Speaker, who decided that, as Mackenzie had not taken the oath, he was not a member of the House, and was not entitled to remain. Mackenzie was there, ready and anxious to take the oath; but he was nevertheless removed by the Sergeant-at-Arms, and the Assembly was once more purged of his presence. On the next day he was again formally expelled by a vote of the House *—an anomalous proceeding in view of the Speaker's decision that he was not a member! He had thus been thrice expelled from the House, and once excluded therefrom upon the ground that he was not a member.

It was by this time clear that from a House so constituted Mackenzie could not expect to meet with fair play. Mr. Bidwell, Mr. Perry, and others of his friends had all along spoken manfully on his behalf when-

* As the resolution recited the facts relating to the two former expulsions, as well as the grounds of the present one, it may not be amiss to transcribe it in full. It was voted upon on Tuesday, the 17th of December (1833). Its mover was William Morris, member for Lanark. It was in the following words: "That this House, on the thirteenth day of December, 1831, in consequence of a false and scandalous libel published against a majority of its members by William Lyon Mackenzie, Esquire, one of the members then representing the County of York, of which he avowed himself the author and publisher, was induced to expel him, the said William Lyon Mackenzie, from this House: That notwithstanding the gross and scandalous nature of the said libel, this House, in the hope that the said William Lyon Mackenzie would abstain from a continuance of the offensive conduct for which he had been expelled, permitted him to take his seat on the third day of January following, as a member for the County of York, after being re-elected: That in this hope, so important to the deliberate transaction of public business, so essential to the respectability of the Legislature and peace of the country, a few days' experience convinced this House there was so little reason to rely, that on the seventh day of the same month of January, it was by a large majority again deemed necessary to expel the said William Lyon Mackenzie, for a repetition and aggravated reiteration of the aforesaid false and scandalous libel; and in doing so, this House, in order to support the dignity which ought to belong to a Legislative body, considered it just and proper to declare the said William Lyon Mackenzie unfit and unworthy to hold a seat in this House during the continuance of the present Parliament: That as the said William Lyon Mackenzie has never made reparation to this House for the gross injuries which he has attempted to inflict on its character and proceedings, there is no reason to depart from the resolution of the said seventh day of January, 1832." In amendment, Mr. MacNab, seconded by Mr. Robinson, moved that the following words be added to the original resolution: "And therefore he, the said William Lyon Mackenzie, again elected and returned to represent the County of York in this present Parliament, is hereby expelled." The amendment, as well as the original motion, was carried by a vote of 22 to 18.

ever an opportunity of doing so had presented itself, but their arguments had simply been thrown away. His pugnacious spirit was however fully aroused, and he determined to exhaust every means before abandoning his endeavours to take the seat to which he was entitled. He applied to the Lieutenant-Governor for permission to take the oath prescribed for members of the Legislature before his Excellency, or before some one specially appointed for the purpose, under the twenty-ninth section of the Constitutional Act of 1791.* The question involved in this application was submitted to the Attorney-General, Mr. Jameson, who pronounced the opinion that Mackenzie was entitled to the privilege asked for. The matter was nevertheless allowed to remain in abeyance for some weeks, as the hostile members of Assembly had been worked up to a great pitch of excitement by the incursion of the rural population, and were in no humour to tolerate Mackenzie's presence. Meanwhile petitions to the Lieutenant-Governor were sent in from various parts of the County of York, as well as from other places. The language in some of these was of the most unmistakable kind, and it was evident that endurance had nearly reached its limits. On Monday, the 10th of
1834. February, Mackenzie, having taken the oath before the Clerk of the Executive Council, and having obtained a duly attested certificate of the ceremonial, ventured once more to present himself in the Chamber of the Assembly.

The House was in Committee on the question of improving the navigation of the St. Lawrence when he entered. The gallery was crowded with spectators, most of whom were sympathizers with Mackenzie, and had assembled there to impart to him a sort of outside numerical support. He walked to the seat which he had once been accustomed to occupy, and quietly sat down in it. Ere many minutes the Sergeant-at-Arms† approached and requested him to withdraw. This he declined to do, alleging that he was a member legally elected, duly sworn, and charged with no offence or irregularity which could disqualify

* This section provides for the taking of the oath before the Governor, Lieutenant-Governor, or person administering the Government, or "before some person or persons authorized by the said Governor or Lieutenant-Governor," etc.

† The Sergeant-at-Arms was Allan MacNab, Sr., father of the junior member for Wentworth.

him from sitting and voting.* He produced the attested copy of the oath, and bade the Sergeant-at-Arms interfere at his peril. The following is Mackenzie's own account of what ensued; and, unlike most of his narratives, it is in all substantial respects confirmed by several eye-witnesses. "He [the Sergeant-at-Arms] said he must use force, and he did so in as gentle a manner as was consistent with the act. Although his proceedings were illegal, his whole conduct in carrying them into effect was marked by a discretion wisely adopted in the excited state of the minds of the dense audience by whom he was surrounded. I almost immediately returned to the seat I had occupied, and while on my way was seized hold of by Colonel Frazer, Collector of Customs at Brockville, and obliged to change my route. Before I had got well seated, one of the members, I think Mr. Boulton,† moved that the Speaker take the chair. He did so, and I addressed him, stating the insult I had received while in the performance of my duty as a member. To this he made no reply, but said that the Sergeant-at-Arms must know his duty. He then left the chair; the Committee resumed, and I was a second time forced from my seat by violent means. After a little reflection I decided to resume my seat; was a third time forced from it by the Sergeant-at-Arms, and when the Speaker had returned I was placed at the bar, charged by the Sergeant-at-Arms with refusing to leave the House."‡ The Sergeant-at-Arms then reported to the Speaker that he had taken into custody William Lyon Mackenzie for disorderly conduct, and that he had him in charge at the bar; whereupon it was moved by Mr. Samson, and seconded by Mr. Vankoughnet, member for Stormont, that William Lyon Mackenzie, having been brought to the bar of the House by the Sergeant-at-Arms for disorderly conduct, be called upon to state what he might have to say in his defence. To this motion Mr. Perry moved an amendment to the effect that Mackenzie was under no legal disqualifications, and had a right to sit and vote in the House. Then followed a long debate which lasted nearly

* See the *Advocate* of Thursday, February 13th, 1834.

† Not H. J. Boulton, who had several months before departed for Newfoundland, but George Strange Boulton, one of the members for Durham.

‡ See the *Advocate* of February 13th, 1834.

six hours,* and which left the question at issue pretty nearly where it had been. Mr. Perry's motion was lost by a vote of twenty-one to fifteen. A dense crowd occupied the gallery until far into the night, but good order was preserved, the only demonstration being a subdued hiss while Mr. William B. Robinson, member for Simcoe, and brother of the Chief Justice, was speaking. Much rancour was exhibited by some of the Tory speakers, several of whom approved their loyalty by inveighing loudly against the Lieutenant-Governor for permitting the Clerk of the Executive Council to administer the oath to Mackenzie. Allan MacNab declared his intention to vote for committing Mackenzie to the common jail. Casting his eyes up to the gallery, he scowled at the occupants, to whom he referred as a band of ruffians who had come there to intimidate the House. The Lieutenant-Governor, he said, had interfered very improperly, and in a manner no way creditable to himself. He had acted like the Vicar of Bray, and might yet find, like that individual, that by taking both sides of a question he might fall through between. Mr. Samson, member for Hastings, spoke to a similar purport, declaring himself to be in favour of sending Mackenzie to jail without a hearing, and referring to the Lieutenant-Governor in terms of strong censure. "His Excellency," remarked Mr. Samson, "knew perfectly well that Mr. Mackenzie had been expelled by us, and for him to allow the oath to be administered under such circumstances was a most unwarrantable proceeding. He had no right whatever to interfere. I do say he acted a most improper part, and I do not know but this House ought to take it up." When Mackenzie attempted to speak at the bar, William Hamilton Merritt, member for Haldimand, rose in much anger, and exclaimed: "Drown his voice. He ought to be put out of the House, and two men stationed continually at the door to keep him out." Absalom Shade, of Galt, member for Halton, was of the same opinion. The speech of the member for Simcoe, which evoked the hiss from the gallery as already

* Mackenzie, in the *Advocate*, says "full seven hours," but he did not reach the Assembly Chamber until nearly half-past three in the afternoon, and the House adjourned at 9.30 for want of a quorum. See the sessional journal. The three removals of Mackenzie from his seat must have occupied some minutes, and the entire debate could not possibly have extended over quite six hours. The matter is of no particular importance, but it shows how carefully all unsupported statements of Mackenzie ought to be scrutinized before being admitted as evidence.

mentioned, was perhaps the most violent of all. He advocated that Mackenzie should be punished and consigned to jail without being allowed to utter "one single word" in defence of his outrageous proceedings. "Mackenzie," said he, "would never have dared to show himself in this House again if he had not had his Excellency's sanction for doing so in his pocket. His Excellency's conduct, I maintain, has been utterly unjustifiable. Indeed, I could not have believed it possible that his Excellency should have thought of taking such a step without consulting the Speaker of this House. He had no right whatever to do so, and now that he is told that we do not recognize such a right on the part of the Executive, I trust he will not persevere."* For milder language than this, many of the Reformers had been branded as "traitors," "disaffected," and "republicans," by the very person who now gave utterance to it. The beam in one's own eye is so much harder to perceive than the mote in the eye of one's brother.

The plain fact of the matter is, that no sentiment of either loyalty or disloyalty had anything whatever to do with the treatment to which Mackenzie was subjected at the hands of the Compact and their supporters. It was simply this: Mackenzie was a thorn in their sides. He watched them closely, and exposed their conduct in language which was telling and vigorous, albeit often ill-considered and unbecoming. They felt that their supremacy was menaced, and largely by his instrumentality. His expulsions were due to a fixed determination to keep him out of Parliament, irrespective not only of what was constitutional or unconstitutional, but even of what was right or wrong. To carry out this determination they resorted to all the party devices which a majority in the Assembly placed at their disposal. "From first to last," as Mr. Lindsey remarks,† "the proceedings against Mr. Mackenzie were conceived in a party spirit, and carried by party votes. No worse descrip-

* "It is probable," says Mackenzie (*Colonial Advocate*, Feb. 13th), "that the provoking language of some of the members would have ended in a disturbance had I not warned the people through the press, personally at many of their dwelling houses, and in the House before I took my seat, to preserve perfect silence whatever the members said or did. They were very orderly, and it is creditable to them that they were so. If public opinion will not avenge our cause, violence and tumult will not help us." The irony of fate had decreed that this admirable sentiment should not find a permanent lodgement in the writer's breast.

† *Life and Times of Mackenzie*, vol. i., p. 311.

tion or condemnation of them could be given, seeing that they were in their nature judicial."

The debate, as has been said, came to nothing. Mackenzie was not permitted to take his seat, and did not again attempt to do so during the session. No new writ was issued for the election of a member by the County of York. Mackenzie's supporters opposed the issue of a writ because such a proceeding would have assumed that the expulsion had been legal, and that there was a legal vacancy in the representation. Others, who were not friendly to Mackenzie, felt that a new election would only lead to fresh complications. York would undoubtedly return the expelled member, and he would again be refused a seat in the House. The session accordingly dragged on to its close without any writ having been issued: a matter of little practical importance, inasmuch as there was to be a general election in the course of a few months. It will thus be seen that the County of York underwent a partial disfranchisement for three years, during which three sessions were held. Before another session came round a new Parliament had come into being, and the political situation had undergone a complete metamorphosis.

During the session of 1833–'4, which witnessed the tumultuous scene just described, the Provincial Parliament made one important concession to public opinion by passing an Act to render the Judges of the Court of King's Bench independent of the Crown. It is right to state, however, that this was done in consequence of pressure from the Imperial Government,* and not from any wish to remove an abuse of long standing. The Act provided that "the Judges of His Majesty's Court of King's Bench for this Province shall hold their offices during their good behaviour, notwithstanding the commissions which have been heretofore granted to them, or either of them, may specify that the office is to be held during the pleasure of His Majesty; and that from and after the passing of this Act the commissions to the Judges of the said Court shall be made to them respectively to hold during their good behaviour, and that the commissions of Judges of the said Court for the time being shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of His Majesty, or of any of his heirs and

* See Lord Goderich's despatch of 8th November, 1832.

successors." Thus were the Judiciary rendered independent of the humours of the Executive, whereby a long step was taken towards securing a pure administration of justice in the Superior Court of the Province. Had a similar policy been pursued with respect to other gross abuses, the effect upon the public mind would have been most pacificatory. Standing, as it did, alone, the Act exhibited a striking contrast to every other feature of the Executive policy, and it may be doubted whether a solitary inhabitant of the Province was conciliated thereby.

CHAPTER XIII.

MR. HUME'S "BANEFUL DOMINATION" LETTER.

MACKENZIE'S repeated expulsions, unjust as they were, and humiliating as were some of the attendant circumstances, were not wholly without compensation. For one thing they caused him to be more talked about than any other man in Upper Canada. This, of itself, would have gone far towards reconciling him to the indignities which had been heaped upon him, for notoriety was very dear to his heart. But a more substantial reward, and one altogether unlooked for, was in store for him.

Within a month after the scene in the Assembly described towards the close of the last chapter, the town of York ceased to exist, having exchanged its name for the old Indian appellation which it has ever since borne. An Act of incorporation had been obtained during the session, whereby it was enacted that York should be constituted a body corporate and politic by the name of the City of Toronto. The city was to be divided into wards, with two aldermen and two common councilmen for each ward, to be elected by the inhabitants; and with a mayor, to be elected by the aldermen and councilmen from among themselves. This Act, like the rest of the measures passed during the session, was assented to on the day of adjournment—the 6th of March, 1834. On the 15th of the same month an official proclamation appeared whereby Thursday, the 27th, was appointed for the first election of municipal representatives. A campaign of active canvassing was forthwith set on foot throughout the city. As has often happened in more recent times, the contest assumed a political complexion. The Act of incorporation had been procured by Tory influences, and had been carried through the Assembly under the auspices of Sheriff Jarvis, the local member. In his speeches

on the subject in the House Mr. Jarvis had taken the reasonable and legitimate ground that the Provincial capital had attained dimensions which rendered a separate government necessary to the efficient management of its affairs. This view was participated in by Tory residents generally. The Reformers, on the other hand, had all along been opposed to incorporation. York, they argued, was the main fortress and stronghold of the official party, who would be almost certain to acquire a pernicious ascendency in municipal affairs, to the detriment of the rest of the community. The Province at large had already suffered enough from Compact domination, and it was far from desirable to afford an opportunity for its exercise in a more restricted field. Again, it was urged that the expense of a separate administration for the city would more than counterbalance any advantages to be derived therefrom. These views were put forward with much vehemence by Reformers, both in Parliament and through the medium of the press. From all which it was evident that the impending elections would afford a pretty accurate test of the strength of the respective political parties in the city.

Generally speaking, the Tory vote in the capital had been largely in excess of that polled by the Reformers. That it was not so in the spring of 1834 was due in no small degree to public indignation at the unfair treatment to which Mackenzie had been subjected. Persons who had never recorded a Reform vote before now came forward to support candidates who were known to be strong Reformers. It was not so much that these persons sympathized with Mackenzie, who was by many of them held in detestation and abhorrence; but they felt that gross injustice had been done, against which it behooved them to record their formal protest. The result was that the sanguine calculations of the Tories were altogether falsified, and that a majority of Reform candidates were returned to the first Council of the City of Toronto. Among the latter were Mackenzie himself, who was elected as one of the aldermen for St. David's Ward, and John Rolph, who was elected for the Ward of St. Patrick.

A few words of explanation are necessary in this place with regard to Mr. Rolph. It will be remembered that he and the two Baldwins had divested themselves of their gowns during the progress of the Willis

dispute, and had declined to transact any further business in a court which they believed to be illegally constituted.* They did not again present themselves before the court during Term until after the decision of the Privy Council had set their minds at rest on the subject. There was no longer anything to prevent them from resuming their practice. The Baldwins did so, and Rolph for a time followed their example, albeit in a half-hearted manner. He had long been profoundly disgusted with the partiality displayed by the judges, and by their complete subserviency to the wishes of the Executive, as expressed by their forensic mouthpiece, Attorney-General Robinson. On account, as he believed, of his political opinions, he had been forced to contend against the persistent hostility of the judiciary. His triumphs at the bar had been won by reason of his power over juries, and in spite of one-sided charges from the bench. Of the understanding and judicial integrity of Mr. Sherwood he had formed a very low estimate. Hagerman, who temporarily succeeded Judge Willis, was an abler man, but his political feelings were so strong that Rolph would not imperil the interests of his clients by appearing before him. Upon the accession of Attorney-General Robinson to the bench the state of affairs from Rolph's point of view was not much improved. Mr. Robinson and he had so long fought each other at the bar and on the floor of the Assembly that they had come to regard each other as personal enemies. Rolph, rightly or wrongly, came to the conclusion that he could no longer hope to obtain any measure of justice. The necessary consequence of such a conclusion was a resolve to abandon the practice of law, and to resume that of medicine, which latter, indeed, he had never wholly abandoned. This resolution was not fully carried out until more than two years after it had been formed, though he meanwhile accepted no new suits, and steadily prepared himself for the impending change. The decisive step does not appear to have been taken until 1832, when he transferred his legal practice to his brother George. Thenceforward John Rolph never again appeared in a Court of justice in the capacity of an advocate. It was a momentous decision, for he had a fine legal practice, and enjoyed the reputation of being the most eloquent man at the Upper Canadian bar. He had outlived the

* *Ante*, p. 187.

exuberance of youth, and was at this time nearly forty years old—an age at which few men would have had the courage to abandon a pursuit which had been followed with signal success for many years. He resumed the practice of medicine and surgery, and was thenceforward known as "Doctor" Rolph. For some years before this time he had resided at Dundas. He now removed to the capital, where he was well known, and where he continued to reside until the breaking out of the Rebellion towards the close of 1837. He soon won a distinguished place in the ranks of his new calling, and reached a preëminence therein as great as he had ever attained at the bar. There was no regularly-organized medical college in Upper Canada, and the facilities for acquiring a competent medical training were few. In response to urgent requests from a number of influential persons in Toronto he established a private medical class, and gave instruction to a limited number of students. His teaching was eminently successful, and he made himself greatly beloved by his students. He seemed to have the whole round of medical literature at his fingers' ends, and his marvellous knowledge and graphic power of expression kindled in the breasts of the young men a love of knowledge for its own sake.* By no one were his attainments held in higher respect than by the Lieutenant-Governor. Sir John urged him to found a permanent medical college, and promised that Government aid for such an enterprise should not be wanting. But Dr. Rolph had other views. He had for several years been out of public life, but with no idea of so remaining. He was resolved to re-enter Parliament at the first suitable opportunity, and did not allow his professional pursuits to absorb all his attention. Unlike Robert Baldwin, who to a great extent held himself aloof from politics at this time, Rolph took a leading part at Reform meetings and caucuses, and did his utmost to give practical shape to the Reform policy. Baldwin, notwithstanding his undoubted zeal for Liberal principles, was imbued with somewhat

* "To his instruction, and the love of knowledge which he never failed to inspire in those who came within the magic of his eloquence, many men who have since made their mark on the history of Canada owe their first start in intellectual progress. Notable among these is the present Chief Superintendent of Education, who has acknowledged that if he has achieved any distinction, it is mainly due to the love of knowledge with which he was inspired by the eloquence and example of Dr. Rolph." Such was the late Dr. Ryerson's own testimony, as published in the *Journal of Education*, upon Dr. Rolph's death in 1870.

exclusive social ideas, and was not in active sympathy with the Reformers at this period. He regarded Mackenzie as very much of a demagogue, and as a person with whom he could not hold any very intimate relations. The sentiments entertained by Baldwin for Mackenzie seem to have been closely akin to those entertained by Sir John Falstaff for the troops with whom he declared that he would not march through Coventry. Mackenzie's noisy verbosity and self-assertion offended the patrician instincts of Mr. Baldwin, to whom, indeed, the little proletarian was altogether distasteful and repulsive. This feeling, however, seems to have been due to the antipathetic natures of the two men, rather than to any mere feeling of exclusiveness on the part of Mr. Baldwin. They had as little in common as two persons very well could have. Without entering any further into the question, it will be sufficient to say that the one had a judgment under strict discipline, while the judgment of the other was always subordinate to the circumstances or prejudices of the moment—a fatal defect in one who aspires to be a leader of men. Mr. Baldwin made no secret of his conviction that no substantial progress could be made by the Reform party so long as one like Mackenzie was permitted to have any commanding voice in its counsels, or at any rate to have any hand in the shaping or directing of its policy. Rolph took a broader view, and while he admitted the notoriously weak points in Mackenzie's character, did not feel disposed either to throw him overboard altogether or to deprive him of a share in the direction of party affairs. He naturally felt and spoke strongly on the subject of the expulsions. For Mackenzie personally he had never felt much liking, but he hated injustice, and did not hesitate to give the expelled member all the support, moral and otherwise, which he could command. He was wont to say that Mackenzie might yet do much good work for Reform, if he could only be kept in his proper place. Mackenzie, on his side, never wearied of sounding Rolph's praises, and he sometimes did so in extravagant terms. Wherever he went he proclaimed the Doctor as the one man in Upper Canada capable of leading the Reform party to triumph and permanent power. Bidwell and Perry were well enough in their way, but to neither of them would he pin his faith if Rolph questioned the wisdom of their counsels.

Such was the state of affairs at the time of the election of the first Council of the City of Toronto. In that Council, as already mentioned, there was a preponderance of Reform members. According to the provisions of the Act of incorporation the aldermen and councilmen were to hold their first meeting on Thursday, the 3rd of April, when they were to proceed to the election of a mayor. As the Reform members were able to command the situation, they held a caucus on the evening of Monday, the 31st of March, to concert a scheme of action, and to take steps to turn their numerical superiority in the Council to the best account. An understanding had already been arrived at as to the mayoralty. Dr. Rolph had been pitched upon by common consent to fill the chair of the chief magistrate. He was upon the whole better fitted to grace the position than any other man in the city, and the Reform members contemplated their candidate with pride. But at the caucus held on the evening of the 31st matters took an altogether unexpected turn. Dr. Rolph did not attend, being kept away by professional duties. It was suggested by James Lesslie, one of the aldermen from St. David's Ward, that the Doctor was indifferent as to the mayoralty, and that he would be quite willing to waive any claims to the position which he might be supposed to have. It was further suggested that the interests of the Reformers would be best promoted by the elevation of the editor of the *Advocate* to the chief magistracy. Mackenzie, it was urged, had been treated with shameful indignity by the Assembly, and had been held up to contempt by the official party generally. He had been maligned at the Home Office as a personage whom the Secretary could not admit to his presence consistently with due respect to himself and his office. He had been represented as a snarling little upstart who, by the votes of the lowest and most rascally section of the Radicals, had been placed in a position unsuited to his character and belongings. It had been especially urged against him in England that the better class of Reformers held aloof from and thoroughly despised him. There could be no doubt that by such representations as these Mackenzie had been subjected to much unmerited obloquy and annoyance during his sojourn in the old country. The present conjuncture of affairs, it was said, afforded an excellent opportunity for atoning to him for what he had endured, and

at the same time for scoring a double victory for Reform principles. His elevation to the chief magistracy of the capital city of Upper Canada would furnish the most conclusive answer that could possibly be made to the abuse and slander wherewith he had been assailed. The position was one of high honour and dignity. It would be impossible to represent the occupant of that position as the mere tool and mouthpiece of a low Radical clique, or as a person whom no gentleman could admit to a conference. There was much plausibility about these arguments, and they had the more weight inasmuch as Dr. Rolph was said to be personally indifferent about the matter. Dr. Rolph, moreover, needed no accession of dignity. He could certainly derive none from being elected to the mayoralty, and could very well afford to waive his claims. This view of the matter finally prevailed, and it was agreed, before the adjournment of the caucus, that, provided Dr. Rolph were a consenting party, Mackenzie should be the first mayor of Toronto.

When the matter was submitted to Dr. Rolph he expressed some surprise at the action of the caucus. He appears to have felt convinced that no credit to the Reform cause was to be won by placing Mackenzie in a prominent position. He knew Mackenzie to be a man who could not stand prosperity, and whose want of mental ballast was such that he was not fit to be trusted with power. He was moreover very much disposed to suspect that the little man himself was at the bottom of the movement in his favour, which was probably the fact. Still, the Doctor was compelled to admit that there was much force in the arguments put forward, and he was by no means disposed to press his own claims. He therefore gave his assent; and from that moment the question was to be regarded as practically settled, although the matter was kept a profound secret among the persons most immediately concerned.

The Conservative members of the Council also held a caucus before the day appointed for the election of a mayor. Their purpose was to organize their forces, and to present the best front which their numerical inferiority would admit of. They had assumed that Dr. Rolph would as a matter of course be the choice of the Reform members for the chief magistracy, and this assumption had been confirmed by common rumour, so that they entertained no doubt on the subject. The selection

met with their full approval. In fact, unless a mayor was to be chosen from their own number—a thing out of the question with such a preponderance of Reform members—no man would have been so acceptable to them as Dr. Rolph. He was known to and respected by them all, and it was felt that he would fill the chair with credit to the city. They accordingly resolved to give him their support, and one of their number, Mr. Thomas Carfrae, jr., wrote to him on the subject. But, Dr. Rolph had meanwhile given his assent to the project of Mackenzie's election, and was not in a position to accept support from any quarter. After careful consideration he had determined to resign his seat in the Council. He foresaw that Mackenzie would render himself unpopular, and deemed it probable that he would be guilty of indiscretions which no public representative of a political party could properly defend. The course of subsequent events was such as to fully justify this forecast. Dr. Rolph replied to Mr. Carfrae, thanking him for his offer of support, but announcing that he was about to resign his seat. He also wrote to his friend Dr. Morrison, one of the representatives of St. Andrew's Ward, to the same effect. The contents of these two letters did not become known until the meeting of the Council on the 3rd of April, otherwise steps would unquestionably have been taken to prevent Mackenzie's election; for the Reformers, with two or three exceptions, were not sufficiently anxious to elect him to oust Dr. Rolph for his sake; and as for the Conservatives, the idea of Mackenzie's elevation to the highest seat in the Council would at all times have been simply intolerable to them. At the appointed time all the aldermen and councilmen were in their places except Dr. Rolph. The chair was temporarily taken by John Doel, one of the representatives from St. Andrew's Ward. It was moved by Franklin Jackes, councilman from St. David's Ward, and seconded by James Lesslie, Mackenzie's colleague as aldermanic representative from the same ward, "that William Lyon Mackenzie, Esquire, be the mayor of this city." The motion took the Conservative members completely by surprise, and they did not attempt to conceal their dissatisfaction, and even disgust. Several of them arose in succession, and spoke in favour of Dr. Rolph. Dr. Morrison then announced Dr. Rolph's decision, and read his letter by way of confirmation. Mr. Carfrae intimated that he had

received from the Doctor a letter to the same purport. There was thus no room for further discussion. The preconcerted programme was carried out. Mackenzie received ten votes in support of his candidature, which constituted a majority. He was declared duly elected, and took the chair of honour. During the afternoon of the same day he took the prescribed oath, and his authority was complete. He could boast that he was the first mayor of Toronto, and also the first mayor ever elected in Upper Canada.

Scarcely had he been installed in office ere he began to furnish examples of that perverse and almost inconceivable want of judgment which attended upon him from the beginning of his life to its end. Knowing the light in which he was regarded by the Conservative members of the Council, it might have been supposed that he would be specially circumspect in his demeanour towards them, and careful not to give gratuitous offence. On the contrary, he conducted himself like a veritable Jack-in-Office, and disgusted not only the Conservatives but some of his own friends. He was constantly intruding his personal antagonisms upon the Council, and trying to induce the members to take sides. His indiscretion in the matter of the famous "baneful domination" letter is absolutely incomprehensible. The particulars can only be given very briefly in these pages.

During the month of May, Mr. Mackenzie received from Joseph Hume, the Radical member for Middlesex in the British House of Commons, an extraordinary letter—a letter which, for violence of tone and intemperance of language, might almost have been written by the editor of the *Advocate* himself. It referred to the Reverend Egerton Ryerson, a leading minister of the Methodist Church and editor of *The Christian Guardian*, in terms which it is astonishing to think that a gentleman in Mr. Hume's position should have permitted himself to employ. Now, Mackenzie had quarrelled with Mr. Ryerson not long before, and had devoted much space in the *Advocate* to maligning him. He saw here an opportunity for a further attack, with which view he deliberately published "copious extracts"* from the letter in the issue of his paper

* The phrase is Mackenzie's own. See his remarks preceding the extracts in the *Advocate* of May 22nd.

dated the 22nd of May. The effect was electrical, for the references to Mr. Ryerson, bad as they were, were not the portions of the letter most calculated to excite astonishment in the public mind. The phrase which called forth prompt execration from all classes of the community was one in which the writer, referring to Mackenzie's last election to the Assembly and his expulsion therefrom, characterized those proceedings as events which must hasten the crisis that was fast approaching in the affairs of the Canadas, and which would "terminate in independence and freedom from the baneful domination of the mother country." These extraordinary words—extraordinary as proceeding from a British statesman to a colonist who was likewise a public character—were printed in the *Advocate*, like the rest of the letter, in large type. It was subsequently urged* on Mr. Hume's behalf that he had not meant to imply *separation* from the mother country, but only an end to the false and pernicious system of governing the colony; and this explanation was admitted by him† to express what he had intended to signify. But if Mr. Hume could write so indiscreetly on such a subject, what is to be thought of the newspaper editor and the politician who had no better sense than to give such a production to the world of Upper Canada, more especially while he himself occupied the position of mayor of its most important city?

No sooner was the number of the *Advocate* containing this letter in the hands of the public than an outcry arose on every hand. The Tories saw their advantage, and made the most of it. Now, it was said, the real designs of Mackenzie and those who acted with him were no longer masked. What they wanted was not constitutional Reform, but separation from the Empire, and the establishment of a republic. And it was not only Tories who spoke and felt thus. Persons who cordially hated

* By Dr. Morrison in the Toronto City Council. See the report of the proceedings of that body at the meeting held on Monday, June 9th, 1834. On the subject generally, see the pamphlet published in Toronto in 1834 entitled *The Celebrated Letter of Joseph Hume*, etc.

† In a letter dated 14th July, 1834, and published in the *Advocate* of September 25th. Mr. Hume there states his meaning to have been "that the misrule of the Government in Canada, and the monopolizing selfish domination of such men as had lately (though but a small faction of the people) resisted all improvement and reform, would lose the countenance of the authorities in Downing Street, and leave the people in freedom to manage their own affairs."

the domination of the Compact, and who had condemned the treatment of Mackenzie as unconstitutional, tyrannical and unjust, now felt that such a man deserved no sympathy. He was evidently a rebel at heart.* He had brought reproach not only on himself, but upon the party to which he belonged. Reform journals hastened to signify their repudiation of the sentiments of the objectionable letter. "We profess ourselves Radical Reformers," said the *Freeman*, "and willing to go any reasonable length in correcting abuses, because we know extensive grievances have existed both in the mother country and in these colonies. . . but we cannot bring ourselves to support violent and unprincipled factions." "It has often been the misfortune," said *The British Whig*, of Kingston, "for those who have laboured to emancipate the people of this colony from Tory misrule to be accused of disaffection to the mother country, and of a design to effect the substitution of a republican mode of Government for their present monarchical form. That no accusation is more generally false we are thoroughly satisfied; and yet, owing to the indiscreetness of certain writers, the enemies of political change have had too many opportunities afforded them to ground their assertions on something like proof. Here is a letter published by a leading Reformer, without one single remark in detestation of the doctrine it promulgates. . . Does Mr. Mackenzie sincerely believe that the independence of

* The following extract is from a cleverly-written letter signed "O. P. Q.," which appeared in the *Courier* of June 5th, 1834. It spoke the sentiments of nearly all the newspapers in the country, of whatsoever shade of politics: "But for that letter the people of this Province might long remain in ignorance of the real motives by which your conduct has been actuated. They might long regard you as a persecuted patriot. . . But your imprudence or your vanity has been the means of completely unmasking and placing you before the people of this country in all the naked deformity of an acknowledged traitor. Henceforth you must be content to be regarded as the secret abettor of a heartless conspiracy. . . Do not think, Sir, that these are the sentiments of a violent political opponent who approves of the measures adopted towards you by the House of Assembly. . . These views, Sir, are the views of a man who has ever denounced the course your adversaries have pursued towards you as unwise, unjust and unconstitutional. They are the sentiments of a man who, if he had the power to punish the persons who first rose you from poverty, ignominy and ruin, to comparative affluence and popular notoriety, would have sent the destroyers of your press to less favoured regions. They are the sentiments of one who had up to the publication of the letter . . regarded you as a man attached to the institutions of your country. . . It is an old adage, 'Give him rope enough,' etc. You have a moderate quantity, and if the avowal of such sentiments as you have lately promulgated do not afford you a few yards more, you may regard yourself as infinitely more fortunate than many better and bolder men."

this Province would be beneficial to its inhabitants; or is he of opinion that the domination of the mother country is baneful? If he answer in the negative, as we think he will, why in the name of common sense did he afford his enemies so much occasion to brand him with disloyalty?" Said *The Free Press*, of Hamilton, "It is not the domination of the mother country that Reformers complain of; it is only the tyrannical conduct of a small and despicable faction in the colony. The domination of the mother country is as necessary to our present happiness and future greatness as the mother's breast is to the infant." "There can be but one opinion," said *The British American Journal*, of St. Catharines, "in the minds of honest men, relative to the sentiments contained in this letter. That they are seditious and revolutionary is painfully evident; besides the language in which it is couched, the brief reference to the important subjects treated of, and the peculiar manner of its appearance before the Canadian public, irresistibly force the conclusion upon our mind that it is the premature disclosure of a plan long premeditated to separate the Canadas from the empire of Great Britain, and either annex them to the confederated union of the States, or establish separate independent republic Governments; as far as the author or publisher of the letter is concerned, it is immaterial which." Mackenzie himself was characterized as a man who was doing his best to drive the people headlong and blindfold into rebellion. Such being the tone of the Liberal press, that of the Tory journals may readily be conceived. Some of them demanded that the Government should institute an immediate prosecution of Mackenzie. Indignation meetings were held all over the Province, at which loyal addresses to His Majesty were passed. The Methodist Conference and other bodies, secular as well as religious, hastened to pass resolutions condemnatory of Mr. Hume's sentiments, and to forward the same to the Lieutenant-Governor. The excitement in Toronto was tremendous. Before noon of the day on which the offensive letter appeared in print a public meeting had been called to protest against the disloyal sentiments embodied in it. It was numerously attended, and, though a good many Reformers were present, a vote of censure on Mackenzie was passed without a dissentient voice. The matter was brought up in the City Council, and, though the support

of the Reform members enabled him to escape the official censure of that body, he was compelled to submit to a series of criticisms which must have been exceedingly galling to his feelings. By this one misguided act he had contrived to do enough harm to far more than counterbalance any good which had been effected through his mission to England; and there were many Reformers who, in spite of all his protestations, never again felt any confidence in him, politically or otherwise.

In his capacity of mayor he was fairly assiduous in his attention to his duties. The city was subjected to a visitation of Asiatic cholera during the year, and he appears to have done his utmost to stay the progress of the pestilence, as well as to provide for the treatment of the stricken patients. He was nevertheless guilty of a number of indiscretions which rendered him odious to a large proportion of the population. His pettiness of spirit was incessantly asserting itself. No person in the community, however insignificant, was beneath his wrath when his sense of personal dignity was wounded. On one occasion a wretched woman of intemperate habits and loose character was brought before him in the Mayor's Court. She was loquacious and abusive, and Mackenzie, in a rage, ordered her to be placed in the public stocks. There were still a public pillory and stocks within the city, but, like those in Squire Hazeldean's parish, they had long been disused. Mackenzie had probably never heard of the maxim *Quieta non movere*. At any rate, the greater part of his life was spent in efforts in an opposite direction. His sentence was carried out, and the culprit was placed in the stocks. Had this been the act of a fossilized member of the Compact it would not have appeared very incongruous, but in Mackenzie it seemed ludicrously out of keeping with his professions. It aroused the popular indignation against him to a higher pitch than ever; but it had one good effect: it led to the removal and destruction of the barbarous relics of mediævalism. To Mackenzie belongs the questionable credit of reviving their use when Tory magistrates had become ashamed to employ them any longer. He is entitled to the further distinction of being the last magistrate in Upper Canada to sanction their use; and that, too, in the case of a poor and defenceless woman, whose wretchedness ought to have removed her far from the possibility of his vengeance.

A considerable part of the summer was spent by both the political parties in the Province in preparing for the general election contest which was to take place before the close of the year. It was held in October. Had it been held some months earlier, while the public sympathy with Mackenzie in consequence of his repeated expulsions was at its height, an overwhelming preponderance of Reform members would have been returned. The publication of Mr. Hume's letter in the interval had alienated many sympathies and lost many votes to the Reform cause. Still, there was a strong tendency throughout the greater part of the Province in the direction of Reform, and the Reformers made unprecedented exertions. They succeeded in winning to their side a large number of the Roman Catholic electorate, and they absorbed most of the recent arrivals from beyond sea. Bidwell and Perry were re-elected for Lennox and Addington. William Benjamin Wells, a young lawyer of twenty-five, who afterwards made some mark as a newspaper writer on the Reform side, and from whose "Canadiana" several extracts have already been made in these pages, was returned for the County of Grenville. He was an Upper Canadian by birth, of U. E. Loyalist stock, and the grandson of a volunteer who fought at the siege of Louisbourg. Oxford returned for one of its members Dr. Charles Duncombe, who was destined to take a conspicuous part in the insurrectionary events of two years later. He was a medical practitioner of great intelligence and wide influence, an eloquent and forcible speaker, and an ardent Reformer. He resided on the Burford Plains, near the present village of Bishopsgate, a few miles west of Brantford. The two members returned for the County of Simcoe represented very nearly the two extremes of political opinion. William Benjamin Robinson, a brother of the Chief Justice, was, as became one of his race, the incarnation of Family Compact Toryism. His colleague was Samuel Lount, whose name, owing to his untimely fate and the melancholy circumstances attending it, arouses a host of sad memories. It may safely be said that of all the victims of the rising of 1837 none has been so sincerely and generally mourned. His execution is justly regarded in the light of a judicial murder and a stain upon our country's annals. As a peculiar interest has ever since attached to his name, and as but little is generally known with respect to him, it

may be proper to record a few particulars. He was born on the banks of the Susquehanna River, in the State of Pennsylvania, on the 24th of September, 1791. His father, Gabriel Lount, was an Englishman, and a native of Bristol, who settled in the United States after the close of the Revolutionary War, and married an American lady of English descent. Gabriel Lount never lost his British proclivities during his residence in the republic, and in the spring of the year 1811, accompanied by his son and the rest of his family, he removed to Upper Canada. He settled in the township of Whitchurch, where he practised as a surveyor, and in the course of the next few years laid out many official surveys for the Provincial Government. Samuel, prior to his removal to Canada, had learned the trade of a blacksmith, which he carried on for some years at Holland Landing. He had a farm in the same neighbourhood which he cultivated with much pecuniary success. Being a man of great industry and intelligence, he gradually amassed considerable property, and became what for those days might be regarded as wealthy. Better still, he acquired the respect and confidence of the people around him, for he was kind-hearted and generous, and spent much of his time in ministering to the necessities of those in-coming settlers who were less advantageously situated than himself. To this day the neighbourhood abounds with traditions of his noble unselfishness, and there are old men and women who, after the lapse of half a century, cannot speak of Samuel Lount without a dimness of vision and a huskiness of the voice.* Though a zealous loyalist, he was an enthusiastic

* "To the many poor settlers who came from Europe, and obtained grants of lands from the government, he was a friend and adviser, and in cases of necessity their wants were supplied from his purse or his granaries. Many is the time, said some of our fellow-prisoners, that we have seen him, after the toils of the day were over, leave his home to carry provisions for miles through the pathless forest, to the shanty of some poor and destitute settler, who with wife and family were rendered by want and sickness utterly destitute. Those acquainted with the history of new settlements need not be told how often those who have been accustomed to better days are obliged to embark in a new career of life, the duties of which they are totally ignorant and wholly unfitted for, nor how often sickness is engendered by their great bodily exertions, by neglect and deprivation. In a country like that in which Mr. Lount was settled, the inhabitants resided far apart, and consisted generally of old, worn, and superannuated British officers, who, at the close of the war, pitched their tents, for the last time, in the wilderness. The sums which they obtained from the sale of their half-pay, almost expended in the transportation of their little families, before arriving on the lands assigned them by government—unfitted, from their former pursuits, to bear the drudgery their new course of life required, it was frequently the case, that

Sam'l your obt Servant
David Gibson

Eng^d by H B Hall's Sons. New York

Reformer, and vehemently opposed to the domination of the faction whose selfishness went far to paralyze the life of the Province. He was an excellent speaker, and during election contests did much to awaken public opinion on the fruitful subject of Executive abuses. He now, in response to pressing solicitations, allowed himself to be nominated as a candidate for the representation of Simcoe in the Assembly, and, as has been seen, was returned for that constituency along with an ultra-Tory. In personal appearance he was considerably above the medium height, and of robust figure; of dark complexion, and with a pleasant, intelligent expression of countenance.

The County of York, smarting under a sense of indignity and partial disfranchisement, rendered itself specially conspicuous in the contest. During the preceding year an Act* had been passed extending and readjusting the representation of the County, and dividing it for electoral purposes into four Ridings, designated respectively the First, Second, Third and Fourth. Each of these now returned a Radical Reformer. The First Riding returned David Gibson, a land surveyor who resided on Yonge Street, about eight miles north of the city, near the present village of Willowdale. He was of Scottish nationality, having been born in the parish of Glammis, Forfarshire, on the 9th of March, 1804. Within legitimate bounds there was no more pronounced Reformer in the Province than Mr. Gibson, whose house was a sort of rendezvous or place of meeting for party caucuses. He was an honourable and high-minded man, much esteemed by his neighbours, and in high favour with his party. The Second Riding chose Mackenzie. Many of the voters disapproved of some of his acts, but his paper was largely read among them, and it was felt that some recompense was due

before they could raise anything from their lands, they became perfectly destitute of the necessaries of subsistence. Too proud to seek assistance, they would starve rather than communicate their situation; but in Lount, their generous neighbour, they found one quick to discover and prompt in affording relief, and he would minister to their wants with such delicacy that the most sensitive would experience a pleasure rather than the pang of wounded pride."—Theller's *Canada in 1837-38*, vol. i., pp. 233, 234. I transfer these remarks, not because I have any respect for Theller's personal testimony on any subject, but because in the present instance his language clearly expresses the general sentiment of the period with regard to Samuel Lount, and is confirmed by the remembrance of many persons still living in and near Holland Landing.

*3 Wm. IV., c. 15, passed 13th February, 1833.

to him for the indignities which he had suffered. The Third Riding returned Dr. Thomas David Morrison, of Toronto, who has already been referred to in connection with the municipal affairs of the city. He was a physician enjoying a good practice; a man of good sense and wise counsels, and a prominent personage in the ranks of Reform. For the Fourth Riding was returned John Mackintosh, a resident of Toronto, and a connexion, by marriage, of Mackenzie. He was a steady Reformer, of no remarkable abilities, who a few months previously had been elected President of the Metropolitan District Reform Convention, and was known to be to a large extent under Mackenzie's control. Such were the four York representatives.

At the close of the contest the Reformers of the Province had secured a certain majority, which led them to look eagerly forward to the meeting of Parliament, although, with the exception of Bidwell and Perry, their best and most trusted chiefs had no seats therein. Rolph and the Baldwins had positively refused to stand for any of the constituencies, although strongly urged to do so. They seem to have felt that the political pulse was not healthy, and that no credit was to be won, either for themselves or for the Reform cause, while the morbid symptoms continued. The worst symptom of all in their eyes was the ascendency of Mackenzie and his satellites among the rural and uneducated part of the community.* With this ascendency they were wholly out of accord, and they awaited the time when he should find his proper level in public opinion. Dr. Rolph had brought himself to acquiesce in this estimate of Mackenzie with great reluctance; and it is

* In the preceding February Dr. Baldwin had thus written in reply to a notification to attend as a delegate at the District Convention: "This honour I beg leave to decline, and for this reason: that having heretofore served the country to the utmost of my humble abilities as their representative in Parliament, with the sincerest integrity of purpose in maintenance of popular rights, unspotted, I trust, by one single vote of a contrary tendency, I, together with many others of the staunchest friends of those rights, experienced such extreme fickleness of popular opinion that this conclusion has long been formed in my mind: that the great body of the people of this Province (without doubt there are many honourable exceptions), in no wise ignorant of their rights or the great value of them, are nevertheless shamefully indifferent into whose hands they commit their preservation and due exercise. Experience alone must teach the people. This experience is coming to them by painful lessons. . . Under these circumstances I beg you will make my apology," etc. The letter appears in the *Advocate* of March 13th, 1834, following one to a similar purport from Dr. Rolph.

probable that his strong suspicions of double-dealing in the matter of the mayoralty election had something to do with his change of views.

By this time Mackenzie had become tired of publishing the *Advocate*, which was not a commercial success. Early in November the last number published under his auspices made its appearance, and the editor was at liberty to devote his chief energies to his legislative duties.* During the second week in December he and a number of his political friends formed what they called the Canadian Alliance Society, for the promotion of Responsible Government, the abolition of the law of Primogeniture, the secularization of the Clergy Reserves, and other needful reforms, most of which have since been conceded. At the beginning of the new year (1835) Mackenzie again offered himself as a candidate for the representation of St. David's Ward in the City Council of Toronto, but he was defeated by Robert Baldwin Sullivan, a brilliant Toronto lawyer, and a kinsman of Robert Baldwin. The Council elected the successful candidate as mayor for the ensuing year.

* It was continued for some time after by another hand, under the name of *The Correspondent and Advocate.*

CHAPTER XIV.

SEE, THE CONQUERING HERO COMES!

PARLIAMENT met on the 15th of January, 1835, when the Reform majority in the Assembly were able to once more elect Mr. Bidwell to the Speakership. The vote stood thirty-one to twenty-seven. Among the minority were five or six Conservative members who repudiated the name of Tory, and were opposed to the policy of the official party, to whom, as has been seen,* they merely yielded a qualified support as the less of two evils.

1835. Such being the state of affairs in the Assembly, the Compact party were of course precluded from making any further serious attempts to keep Mackenzie out of the House. The proceedings of previous sessions relative to the several expulsions were upon motion of Mackenzie himself expunged from the journals of the House. The baneful domination letter was made the subject of a long discussion, in the course of which Mackenzie received some exceedingly hard hits from Solicitor-General Hagerman; but as he had been manifestly in the wrong in giving publicity to that letter, and as he had been disciplined by members of his party to keep silence in the event of an attack on that score, he sat quietly through the Solicitor-General's onslaught.

The most important proceedings of the session, and the only ones of which it is necessary to take cognizance in these pages, were those relating to the Seventh Report of the Grievance Committee, to which frequent reference has already been made. On Friday, the 23rd of January, Mackenzie moved for and obtained the appointment of a Special Committee on Grievances, with power to send for persons, papers and

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* *Ante*, pp. 231, 232.

records, and with authority to report to the House from time to time by bill, address or otherwise. Mackenzie himself acted as Chairman of the Committee, the other members of which, as finally struck, were Dr. Morrison, David Gibson and Charles Waters, one of the members for Prescott. The famous Seventh Report, which did more to arouse the Home Government on the subject of Upper Canadian affairs than all previous efforts in that direction, was completed and presented to the Assembly on Friday, the 10th of April. It was a truly formidable indictment. It recapitulated the various grievances under which the Province laboured, and which called loudly for remedy. These have been already set forth in former chapters of the present work, and need not here be enlarged upon. The prevailing tone of the Report was temperate and calm, and there is little or nothing in it to which serious exception can be taken, although, as may easily be discerned from internal evidence, the compilers felt strongly the importance of a vivid presentation of their case. The Report proper occupies only fifteen folio pages of the appendix to the official journals of the session; but the evidence taken by the Committee, and the various letters, papers and documents which go to make up the mass of valuable information submitted to the Assembly, extend to voluminous dimensions. In addition to the copies printed for insertion in the appendix to the journal, two thousand copies of the complete work were issued separately in octavo form for distribution. It thus obtained a considerable circulation throughout the Province; and a copy was also sent to each member of the British House of Commons. The first copy that left the binder's hands was forwarded to the Colonial Secretary. All the most pressing grievances were dealt with in greater or less detail, but special prominence was given to the necessity for a responsible Government—a Government responsible to public opinion, which must cease to exist when it ceases to command popular confidence. The wished-for settlement of this important question would necessarily comprehend and include the removal of many of the most glaring abuses to which the people of the Province had long been subject and the Reform party were keenly alive to the importance of obtaining the concession. More than a third of the Report proper was devoted to dealing with the question in its various aspects, and it was shown that

the Provincial Executive were not only impervious to public opinion, but were also ready enough to disregard the views of the Home Government itself when those views failed to coincide with their own plans for self-aggrandizement. Some of the evidence taken was of the most compromising character, while the refusal of leading members of the Compact to answer certain questions propounded to them did not tend to place matters in a more favourable light. Archdeacon Strachan's response to many of the questions put to him amounted to a practical contempt of the Committee. "I do not answer that question."—"I have no answer to give."—"I refer you to the Constitutional Act."—"I cannot answer that question, owing to its assumptions, which I do not admit." Such are a few of his replies. The whole of his examination is worth reading, as exemplifying how far an intelligent man will sometimes permit bigotry and intolerance to gain possession of his soul. Indeed, the evidence of all the witnesses may be read with profit by those who wish to gain a full insight into the state of the Province at that time, and to fully appreciate the necessity which existed for a change in the mode of conducting public affairs.

The report, though presented to the Assembly as above intimated, does not appear to have been formally adopted during the session, but the passing of the order for the printing of it, together with two thousand extra copies, amounted to a practical adoption, and was probably so considered. The Committee could easily have secured its adoption, for the vote on the Speakership had not fully represented the strength of the Opposition, who on several questions were able to command a majority of from ten to eleven. But the fact was again brought vividly home to the Reform party that mere success at the polls had availed them little. Notwithstanding the numerical minority of the official party in the Assembly, they continued to exercise supreme power, and to strengthen themselves by the constant dispensing of patronage. They controlled the Legislative Council, and could thus control the legislative powers of the Assembly, independently of any question of the numerical strength or weakness of the Opposition in that House. The Legislative Council now assumed an attitude of determined antagonism to the popular voice, and would entertain no legislation of a liberal character. The vivid

realization of these facts gave a keen edge to the remarks on Responsible Government in the Grievance Committee's Report. An Address setting forth these various discouragements was forwarded to His Majesty by the Assembly. The language was respectful but firm, and it was hinted that, if a remedy were not provided, resort would have to be had to the extreme measure of withholding the usual supplies. Earnest petitions to His Majesty were at the same time sent across the Atlantic from some of the rural districts, praying that the principles of the British constitution might be applied to Canadian affairs.

The Address and petitions were accompanied by the fullest documentary and other evidence, and, in conjunction with the Grievance Committee's Report, they stirred the Home Government to action. The Colonial Secretaryship had changed hands more than once since Mr. Stanley's tenure of office. The incumbent at this time, and for several years afterwards, was Lord Glenelg. His Lordship gave much consideration to the Report, and laid it before the King in person. The Home Government had by this time fully realized that there was much well-grounded discontent in the Canadas, and that something must be done to allay it. It was clear that the Reformers were justified in at least some of their demands, and that reasonable concessions should be made to them. This conviction led to an ungracious correspondence between the Colonial Office and Sir John Colborne,* who, owing, as is to be presumed, to the advice of Chief Justice Robinson and Archdeacon Strachan, was very reluctant to make concessions as suggested. As this reluctance was made manifest in the course of the correspondence, the Colonial Secretary resolved upon His Excellency's recall. Sir John had been appointed by a Tory Government, the traditions of which had been pretty well swept away by the effect of the Reform Bill. His mode of conducting the Provincial Administration may perhaps be to some extent palliated by the circumstances attending his appointment. But a Whig Government had now been for some time in power, and an effete colonial policy could not be permitted to be maintained to the detriment of colonial loyalty. If Sir John Colborne was

* See *Report of a Select Committee of the House of Assembly on the Political State of the Provinces of Upper and Lower Canada*, p. 25. Toronto, 1838.

not amenable to Whig discipline he must make way for some one of a more plastic mind. He was meanwhile instructed to delay the assembling of the Legislature until the Home Government could fully consider the aspect of affairs, and take such steps for the redress of the Provincial grievances as might seem advisable.

Having arrived at this conclusion, the Colonial Secretary began to look about him for a successor to Sir John Colborne. It was not easy to find one in all respects suitable, for the appointment was not a prize of such magnitude as to attract persons of really first-rate abilities. There seems good reason to believe that the place was offered to at least two fairly competent public servants, both of whom declined it.* In view of his subsequent conduct, it is fair to assume that Lord Glenelg was sincerely anxious to do his best for Upper Canada, and to confer the appointment upon the best man within his reach. How ignominiously he failed to carry out his wishes in this particular is known to every student of Upper Canadian history; but what is not known, either to students of history or anyone else, is—What was the motive power which directed his choice? By what whimsical combination of circumstances it came about that the appointment was finally offered to, and accepted by, one of the most unlikely men in the three kingdoms, is one of those official riddles which appear to defy solution. The fact remains, that the post of Lieutenant-Governor of Upper Canada was conferred upon Sir Francis Bond Head, a Knight of the Royal Hanoverian Guelphic Order, a retired half-pay Major, an Assistant Poor-Law Commissioner for one of the Kentish districts, and the author of several entertaining but exceedingly superficial books of travel. To no one was the appointment a greater surprise than to Sir Francis himself. He must have felt the utter absurdity of the thing—that he had no claim to such a post, and was disqualified from filling it with credit. He neither knew nor cared anything about Canada. He was altogether ignorant of politics. He had never joined any political party; never attended a political discussion; never even voted at an election or taken any part in one.† So far as any knowledge of the British constitution was

* See *Rough Notes on Head's Narrative*, by a Liberal, p. 17. London, 1840.
† See his *Narrative*, Chapter III.

concerned, he had as little as any Englishman of decent education could possibly have. He had no claim upon the Government; was not acquainted with any member of it; and had never so much as seen Lord Glenelg in his life.* It is certainly not strange that he should have been, as he says,† "altogether at a loss to conceive" why this appointment should have been offered to him.

From that day down to the present time the circumstance has puzzled wiser heads than his, and there have been various attempts to solve the mystery. A tradition is said to be current in the Colonial Office that the appointment was the result of a singular misapprehension of identity, and the late Mr. Roebuck assured Sir Francis Hincks that such was really the fact.‡ A "distinguished Imperial statesman" also assured Sir Francis that he had heard the same statement,§ which was to the effect that the person for whom the appointment was really intended was the kinsman of Sir Francis, afterwards Sir Edmund Walker Head, Governor-General of Canada. It is said that at a meeting of the Cabinet, while the selection of a successor to Sir John Colborne was under consideration, one of the Ministers suggested that "young Head" would be a likely man for the position—the person meant being Edmund Walker Head, who was even then known as possessing wide political knowledge, in so far, at least, as such knowledge can be obtained from books. Edmund was moreover known to many public men in Great Britain as an able writer on political subjects, and was a protégé of the Marquis of Lansdowne, who was at this time President of the Council, and, by consequence, a colleague of Lord Glenelg. Edmund, as well as Francis, was a Poor-Law Commissioner, though he occupied a more exalted position than his kinsman. Thus, it is argued, there was some show of excuse for confusing the one with the other. Lord Glenelg, so the story goes, took the suggestion of his colleague as applying to Sir Francis, and acted upon it; and before the error was discovered the appointment had been offered to and accepted by the wrong man.‖ How much truth there may be in

* *Narrative*, Chapter II. † *Ib.*

‡ See *Reminiscences of his Public Life*, by Sir Francis Hincks, K.C.M.G., C.B., p. 14. Montreal, 1884. § *Ib.*, p. 15.

‖ See *The Canadian Portrait Gallery*, vol. iv., p. 172.

this account of the matter it is not easy to say. Such a blunder would imply an amount of carelessness barely conceivable in the management of an important Department of the State. Sir Francis Hincks, however, who has enjoyed exceptional opportunities of discussing the story with leading English statesmen, is strongly disposed to believe it.* Whatever opinion may be formed as to its truth or falsity, certain it is that Sir Francis Bond Head received the appointment, and that his conduct in Upper Canada did more to alienate the minds of the colonists generally than anything which had been done by either Sir John Colborne or Sir Peregrine Maitland. There is this to be said on his behalf: that he came to Canada at a very critical time—at a time when diplomatic shrewdness and statesmanlike sagacity were imperatively demanded of one occupying the position of Lieutenant-Governor. Injustice had so long borne sway in the land that many of the inhabitants had ceased to hope for better times. Many despaired of the future, and a few, whose natural element was opposition, had little desire to be conciliated.† Even a born statesman would have found his task by no means a sinecure.

To statesmanship no shadow of pretence could be made on behalf of Sir Francis Head. The texture of his mind was light and airy. He was inordinately vain and self-conscious; and, as has been seen, he was devoid of political knowledge and experience. The whole course of his previous life had been of a character to render him unfit for such greatness as was now thrust upon him. A considerable part of it had been spent in travel and adventure, and very little of it in study. He had left school at an early age, since which time he

* *Reminiscences*, etc., pp. 14, 15.

† The Colonial Office could not even plead, in extenuation of such a fatal blunder as the appointment of Sir F. B. Head, that it was unaware of the importance of the crisis in colonial affairs. In the beginning of the instructions prepared for Sir Francis, dated "Downing Street, December 15th, 1835," the following words may be found: "I have the honcur herewith to transmit to you a Commission, under His Majesty's sign-manual, appointing you Lieutenant-Governor of the Province of Upper Canada. You have been selected for this office at an era of more difficulty and importance than any which has hitherto occurred in the history of that part of His Majesty's dominions. The expression of confidence in your discretion and ability which the choice implies would only be weakened by any more formal assurance which I could convey to you." What a commentary upon such language was furnished by the mere fact of the appointment of such an one as Sir Francis Head!

had encountered innumerable moving accidents by flood and field in various parts of the world. He had received a certain amount of training at the Military Academy at Woolwich, and had obtained a commission in the Royal Engineers in his nineteenth year. He had seen some active service in Spain towards the close of the Peninsular War; had been present at Quatre Bras and Waterloo, and had fought at Fleurus under the Prussian General Ziethan, where he had had his horse shot under him. After the restoration of peace he had for some time been engaged in making a trigonometrical survey of the island of Lampedoza, in the Mediterranean. Thence he had embarked in a Greek vessel for Tripoli; had been nearly wrecked through the skipper's intemperance, and had finally been put ashore at Malta. He had also been Byron-smitten, and had followed in the wake of the author of "Childe Harold" to the Levant; had contemplated "the Niobe of nations" among the ruins of Rome; had witnessed the dance of the dervishes amid the fallen temples of Athens; and had "felt his patriotism gain force upon the plain of Marathon."* He had twice visited South America as the agent of a company formed for the working of certain gold and silver mines, and known as the Rio de la Plata Mining Association. During one of these expeditions he had ridden on horseback from the port of Buenos Ayres across the pampas to the silver mines of Upsallata, near the foot of the Andes, whence, without any companion whatever, he had galloped back to Buenos Ayres—a distance of nearly a thousand miles—in the brief space of eight days. Then he had retraced his course across the pampas, and, collecting a party of miners at Mendoza, had conducted them over the Andes to Santiago, the capital of Chili. After "prospecting" the country in various directions, he had ridden back across the Andes and the pampas to Buenos Ayres, having traversed six thousand miles on horseback in an inconceivably short time. His "Rough Notes" contains a graphic account of this expedition, and is very interesting reading. It won for him wide notoriety, and led to his being commonly referred to in the current literature of the time as "Galloping Head." His adventurous

* See a brief account of Sir F. B. Head's life published in *The Courier of Upper Canada* of June 11th, 1836, written by Alan Fairford (John Kent), and prefixed, with notes, to the collection of his Excellency's *Speeches, Messages and Replies*, published at Toronto during the same year.

career had left an indelible stamp upon his character. He was rash, impetuous, inconsiderate and superficial, fond of producing dramatic effects, and ever with an eye to some *coup de théâtre*. He had not been a Poor-Law Commissioner long enough to have become thoroughly settled down when a king's messenger arrived at his Kentish abode about midnight, with a missive offering him the appointment of Lieutenant-Governor of Upper Canada. He seems to have at first had sufficient good sense to decline the proffered honour; but he allowed himself to be talked into accepting it by Lord Glenelg and his under-secretary, Mr. Stephen. As I have said elsewhere: "The result of an appointment made under such circumstances was disaster to the Province, and something nearly approaching ignominy to himself. As a civil administrator in a disturbed and grievance-ridden colony, he was altogether out of his proper element, and furnished a signal instance of the round peg in the square hole. His administration extended over little more than two years, but during that period he contrived to embroil himself with his own Executive, with the Home Government from which he had received his appointment, and with pretty nearly every one who was desirous of promoting the cause of political liberty in Upper Canada. He also contrived to do an amount of mischief which left traces behind it for many years after he had ceased to have any control over Canadian affairs. And yet it would be most unjust to represent him as a deliberately bad or ill-intentioned man. He was simply a weak man out of his proper sphere." * That a man of such mental endowments should have been sent out to stem the tide of Upper Canadian discontent, and to conciliate noisy Radicals of the Mackenzie stamp, is in itself sufficient proof that a huge official blunder of some sort was committed. What was wanted was a statesman, and a man of Liberal political views. Had there been any, even the slightest inquiry, it would have been ascertained that Sir Francis hardly knew the meaning of the word statesman, and that he had no political views whatever. It is hardly going too far to say that on all current political subjects, whether pertaining to the colonies or the mother country, his mind was little more than a blank.

* *Canadian Portrait Gallery*, Vol. II., p. 169, where the sentences above quoted form part of a tolerably full sketch of the life of Sir F. B. Head.

Lord Glenelg had an elaborate paper of instructions prepared for the new Lieutenant-Governor. This was intended as the Imperial response to the strong representations which had been received from Upper Canada in the course of the year. Sir Francis was directed to communicate the substance of his instructions to both Houses of the Provincial Parliament. Having been schooled for a few days by Mr. Stephen, and having gone down to Brighton and been presented to the King, he set sail, with his suite, from Liverpool for Canada, by way of New York. While crossing the Atlantic he devoted some time to studying his instructions, together with the Seventh Report of the Grievance Committee, with which he had been provided at the Colonial office.* Upon arriving at New York he pushed on to his final destination. "There would be no end to this chapter," he writes, in the third chapter of his "Narrative," "were I to describe the simplicity of mind, ill-naturedly called ignorance, with which I approached the city of Toronto. With Mr. Mackenzie's heavy book of lamentations in my portmanteau, and with my remedial instructions in my writing case, I considered myself as a political physician, who, whether regularly educated or not, was about to effect a surprising cure; for, as I never doubted for a moment either the existence of the 553 pages of grievances, nor that I would mercilessly destroy them, root and branch, I felt perfectly confident that I should very soon be able proudly to report that the grievances of Upper Canada were defunct—in fact, that I had veni-ed, vidi-ed and vici-ed them." Infatuated man, to compare himself to Cæsar, even in this half-jocular manner, at such a time, and to suppose that the bitter animosities which had been accumulating for the best part of a generation could be swept out of existence at the mere wave of the hand of such a weak substitute for "the mighty Julius" as he!

He reached Toronto on the 23rd of January, 1836. Sir John Colborne was just ready to take his departure, to the great regret of the official party, and very much to the delight of the Reformers, who had been led to believe that the in-coming Lieutenant-Governor was a 1836.

*He seems to have been provided with a duplicate copy by Joseph Hume. See that gentleman's letter to Mackenzie, dated 5th December, 1835, and included in the third chapter of Head's *Narrative*.

thorough-going Liberal, sent over expressly to redress their grievances, and to hurl the Compact from the seat of power which they had so long usurped. Parliament had been assembled on the 14th of the month, and had ever since been expecting the arrival of the King's new representative. As for Sir John Colborne, he was in no good humour with the Imperial Government, although his rigid ideas as to discipline prevented him from giving utterance to his displeasure except to some of the members of the Executive, and even to them his views were imparted with great caution, and in the strictest secrecy.* In consequence of his unsatisfactory communications from the Colonial Office, he had for some time felt his position growing more and more uncomfortable, and had solicited his recall; but his deposition had been fully resolved upon before the receipt of his request by the Colonial Secretary. He had served out his full term of six years, and somewhat more, so that his removal did not imply any reflection upon him. His nature and training unfitted him to carry out the projects of Reform which it had been determined to set on foot, but, in his proper sphere, he was recognized as a valuable public servant, who had all his life done his duty according to the light which had been vouchsafed to him. The leading spirits of the ruling party in the Province contemplated his departure with gloomy forebodings. They also had been led to suppose that Sir Francis Head was a Reformer of wide experience, who was coming among them to introduce a new order of things. They resolved to put forth one great effort while the chance remained to them. They induced Sir John, before his departure, to perpetrate what may fitly be characterized as the most unstatesmanlike act of his life: an act which aroused a perfect transport of public indignation, and caused the name of the perpetrator to be execrated throughout the length and breadth of the Province.

It will be remembered that† provision had been made by the Constitutional Act for the creation and endowment, out of the lands reserved for the support of a Protestant Clergy, of parsonages or rectories, according

* See *Report of a Select Committee of the Assembly*, etc., 1838. See also *The Rectory Question*, p. 2. Toronto, 1836.

† *Ante*, p. 63.

to the establishment of the Church of England. The discussion to which the Clergy Reserves had repeatedly given rise had prevented any advantage being taken of this authority. Nearly half a century had elapsed since the passing of the Constitutional Act, and as the power had been allowed to remain unexercised during all that time, there was good reason to believe that there would be no attempt to put it in operation, more especially in view of the strong feeling entertained with regard to the Reserves, and of the fact that the Provincial Parliament had been requested by the Imperial Government to legislate on the subject. Previous Colonial Secretaries, Lord Goderich among the number, had given what might fairly be construed as pledges on the part of the Imperial Government that no steps would be taken with respect to the disposal of any part of the Reserves, unless in accord with the views of a majority of the Upper Canadian people. Yet Sir John allowed himself to be persuaded into creating and endowing forty-four rectories* with more that 17,000 acres of land, giving an average of about 386 acres to each. These were put in possession of clergymen, who were thus enabled to acquire such a personal vested and possessory interest in the lands as, it was believed, would enable them to make good their titles thereto in a court of law.

This most reprehensible "clerical land grab" was made on the 15th of January, eight days before the arrival of Sir John Colborne's successor, and while Sir Francis was actually *en route* for Toronto. It was thus one of Sir John's last official acts. It is said that he was with difficulty brought to accede to the advice of his Council on the subject. He at all events seemed to feel that his creation of the rectories was an extraordinary act, and he took care to say nothing about the matter to the Imperial Government, who did not discover the facts until Sir Francis Head had been for some time in office. That the creation and endowment of the rectories were the means of greatly intensifying the general discontent throughout the Province, and

* The intention was to create fifty-seven rectories, and patents for that number were actually made out, but thirteen of them were left unsigned by the Lieutenant-Governor, and the authorities refused to complete them or to admit their validity. See *The Rectories of Upper Canada, being a Return to an Address of the Honourable the House of Commons*, etc. Colonial Office, Downing Street, 1839. See also *The Last Forty Years*, vol. ii., p. 199: *Religious Endowments in Canada; a Chapter of Canadian History*, by Sir Francis Hincks, K.C.M.G., C.B.; London, 1869.

that they were thus factors in bringing about the Rebellion, is beyond question; though to say, as has been said by Mackenzie and others, that they were the *prime* factors, is to talk nonsense. The sequel of the story may as well be briefly outlined here. The Executive Council kept the matter secret as long as they could, but it was of such a nature that its early disclosure was inevitable. The transaction became public property in the course of the spring, soon after the close of the session of Parliament. No sooner did it become known than the public indignation began to manifest itself in lurid speeches and newspaper articles. Meetings were held to denounce Sir John Colborne and those who had prompted him to this high-handed iniquity. The Wesleyan Methodist Conference and the Synod of the Church of Scotland in Upper Canada, if agreeing on no other subject, were of one mind as to this, and officially pronounced upon it with a vehemence which commended itself to popular opinion. Petitions without number were sent over the sea. "The Imperial Government," says Mr. Lindsey,* "was besieged with petitions, praying for the annulment of the rectories. The temper of the public mind became imbued with that sullenness which a sense of injury begets, and which forebodes the approach of civil commotion. It was the idea of violated Imperial faith; of a broken compact between the Sovereign and his Canadian subjects, that constituted the sting of the injury. The people recurred to the promise of Lord Goderich that their wishes should be the Sovereign's guide in the matter, and regarded themselves as the victims of a deception which brought dishonour on the Crown and distrust on Imperial faith." The Home Government were in two minds about repudiating the transaction. The right of the Lieutenant-Governor to create and endow without the express assent of the King was not perfectly clear, and the Law Officers of the Crown were consulted on the question. Those gentlemen, on the case submitted for their consideration, pronounced the opinion that there had been an excess of authority, and that the creation and endowment were invalid. Dr. Strachan, upon becoming acquainted with this circumstance, prepared a report embodying certain facts and documents which had not been before the

*See *The Clergy Reserves, their History and Present Position*, by Charles Lindsey, pp. 30, 31. Toronto, 1851.

Law Officers, to whom the case was now submitted a second time. The additional data placed a different face upon the question, and the Law Officers arrived at a conclusion contrary to that which they had formerly expressed. The grantees were accordingly permitted to retain their property undisturbed, but the name of Sir John Colborne continued to be execrated in Upper Canada for his share in the transaction for many a year.*

*It has not been deemed necessary to go very fully into the Rectory question in these pages. Anyone desiring to do so will find very full details in the various authorities above cited.

CHAPTER XV.

"A TRIED REFORMER."

SIR FRANCIS HEAD, upon reaching Toronto on Saturday, the 23rd of January, temporarily took up his quarters at a hotel, where apartments had been engaged for him. He was not a little surprised, as he rode along the streets, to see himself placarded in large letters on the walls as "Sir Francis Head, a Tried Reformer." What a farce the thing must have appeared in his eyes, knowing, as he did, that up to the date of receiving the king's messenger, he had never read a page of practical politics; that he had never recorded a political vote, and that he was at this present moment, to use his own frank expression, no more connected with human politics than the horses that were drawing him! How he must have marvelled at Fate for playing him such a trick! On the same day, at the urgent request of Sir John Colborne, he removed to Government House. On Monday, the 25th, he was sworn into office as Lieutenant-Governor; and on Tuesday Sir John and his family took their departure for Montreal. The Compact took care that their staunch friend should not leave the seat of his Government without some mark of what might pass for popular favour. A crowd of persons was got together to cheer as Sir John passed along the streets on his way eastward, and a stranger might have been excused for believing that the ex-Lieutenant-Governor was regarded by the populace with feelings of the warmest affection. He proceeded to Montreal, and had arranged to sail from New York for England, when he received a despatch appointing him Commander-in-Chief of the Forces in Canada. He accordingly repaired to Quebec, the capital of the Lower Province,

which was already in a state of ferment, and preparing for the outburst which ensued towards the close of the following year.

Sir Francis being now formally installed in office, an era of Reform was commonly supposed to have begun. His manner and address were in the highest degree pleasing, and he at first produced a most favourable impression upon all who came within the immediate circle of his influence. The Reform press sang pæans in his praise. He had no sooner received his appointment than Joseph Hume had written to Mackenzie congratulating the Province on the circumstance, and stating that the conduct and principles of Sir Francis had been much approved of. "My anxiety is," wrote Mr. Hume, "that you and all the Reformers should receive Sir Francis in the best possible manner, and do everything consistent with principle to meet his views and wishes."* The fact was that Mr. Hume was in precisely the same condition as Lord Glenelg himself with respect to Sir Francis: that is to say, he knew nothing whatever about him. He seems to have very unwisely taken it for granted that the new Lieutenant-Governor was a good man for the position because he had been appointed under Whig auspices. His letter found its way into all the Reform newspapers in Upper Canada, and Sir Francis had no reason to complain of the treatment he received at their hands. He was welcomed as the "Tried Reformer" for whom they had so long prayed in vain. The Tories and Conservatives, on the other hand, naturally regarded him with considerable apprehension. They entertained no doubt that his advent boded their downfall; but they were too wise to betray any solicitude, and quietly waited the march of events. Parliament being in session, he received from both Houses congratulatory addresses upon his assumption of the Government. On the 27th he went down to the Council Chamber, and made a brief and rather meaningless speech to the Legislature.† "As regards myself," said he, "I have nothing either to promise or

* See the letter, in Head's *Narrative*, chap. iii.

† This proceeding was not relished by the Assembly. Sir John Colborne had already delivered one Speech from the Throne at the opening of the session, and this delivery of a second one was resented as a breach of privilege. After much time had been wasted in discussion, a precedent for the Lieutenant-Governor's action was found under date of December, 1765, and the matter was allowed to drop.

profess, but I trust I shall not call in vain upon you to give me that loyal, constitutional, unbiassed and fearless assistance which your King expects, and which the rising interests of your country require." He had been directed by Lord Glenelg to communicate to the Provincial Legislature the substance of his instructions. He not only communicated the substance, but a verbatim copy of the letter itself, together with a copy of the appendix, to each of the Houses. By this injudicious proceeding he caused no little embarrassment to the Colonial Secretary, and proved his utter want of experience in diplomatic affairs.* Lord Glenelg, in common with the official world of Great Britain generally, felt and expressed strong disapprobation of this extraordinary conduct on the part of the Lieutenant-Governor, who ought to have been recalled for this act alone, and probably would have been but for the difficulty of finding a competent man to succeed him.

A certain space must be devoted to an examination of these instructions. Speaking generally, it may be premised that they showed a disposition to conciliate the discontent of the colonists, but only after a partial and piecemeal fashion, such as might be exercised towards persons in a state of tutelage. It was evident that the Home Government regarded the colonists as persons who had not reached full political stature, who were not in all cases able to judge as to what was best for themselves, and who needed the constant supervision of calmer and loftier intelligences than their own. In reply to the allegation that the number of public offices in the colony was in excess of the people's needs, it was said that in Upper Canada, as in other new countries, the number of public employments was necessarily larger in proportion than in older and more densely-peopled states. "In the early stages of such a society," wrote Lord Glenelg, "many duties devolve upon the Government which, at a more advanced period, are undertaken by the better educated and wealthier classes, as an honourable occupation of their leisure time." He went on to say that His Majesty's Government were not solicitous

* In the third chapter of his *Narrative* Sir Francis attempts to excuse himself for this senseless act. The reader who thinks it worth while to consult the rhetorical plea there attempted to be set up will recall Pembroke's dictum, in *King John*, that

"—— oftentimes excusing of a fault
Doth make the fault the worse by the excuse."

to retain more patronage than was necessary for the people's welfare, but that the selection of public officers must be entrusted to the head of the local Government, and could not wisely be exercised in any form of popular election, or committed to any popular body. Such exercise or transfer, it was suggested, would be destructive of responsibility and discipline. This doctrine was laid down as a general rule of action, but any wish to urge it beyond its just and necessary limits was expressly disclaimed, and it was even suggested that there were cases in which the doctrine might be contravened. There was no attempt to go into details as to specific cases, but it was stated as a general principle that whatever patronage was necessary to maintain perfect subordination to the prerogatives of the Crown must be retained, and that whatever was unnecessary for that purpose should be abandoned. His Excellency was directed to review and consider the subject with diligence, and to report the result of his investigation. Should he meanwhile deem it wise to reduce the number of offices, either by abolition or consolidation, he was authorized to exercise his discretion in that respect, but any appointment made under such circumstances was to be merely provisional, and subject to cancellation by the Home Government. In the selection of persons for public offices his Excellency was to be guided exclusively by the comparison of the claims of the candidates by reason of past services or personal qualifications; and as a general rule no person was to be appointed to office who was not either a native of the Province or a settled inhabitant of it. Exceptions to this latter rule were admitted where a knowledge of some particular art or science was demanded, and where no Provincial candidate could be found possessing the necessary qualifications. His Excellency was also left free from restriction in the choice of those officers immediately attached to his own person. There were various other directions, not necessary to be specified, on the subjects of patronage and pensions, salaries and fees, and the Provincial Post Office. The Clergy Reserves question was dealt with in the most general manner, no definite course being suggested; and the instructions on this subject are absolutely devoid of historical or other value. With regard to the Land-Granting Department, it was assumed that some of the grievances had been remedied. Reference was made to a despatch

of Lord Ripon's on the subject, and it was stated that any ambiguity therein was to be removed, while prompt obedience to the instructions embodied therein was inculcated. Upper Canada College, established by Sir John Colborne only five years before this time, had already become a ground of offence to many Reformers. The Assembly, in their Address to His Majesty, had declared that it was upheld at great public expense, with high salaries to its principal masters. They had expressed the opinion that the Province in general derived very little advantage from it, and that it might be dispensed with. On this subject Lord Glenelg remarked that there was no desire to retain any charge for the establishment more than sufficient to suitably provide for the effective performance of the teachers; but the advantages of such an institution, it was said, ought to be great, and if the Province derived no benefit from it the explanation was to be found in some error of management susceptible of remedy. His Lordship remarked that he should deeply lament the abolition of a college "of which the defects would appear so remediable, and of which it does not seem easy to exaggerate the benefits." As for King's College, which was another educational bone of contention between the two branches of the Provincial Legislature, it was intimated that His Majesty would cheerfully resume the consideration of the charter, provided the assent of both Houses to his doing so could be obtained, but that, as the subject had been committed to the local Legislature, he could not withdraw it from their cognizance at the instance of one branch only. The system of auditing the public accounts had been complained of as being insufficient for ensuring the proper application of the revenue. As a remedy, the establishment of a Board of Audit, the regulation of which should be secured by well-considered legislation, had been suggested. In this suggestion the Colonial Secretary expressed his concurrence, and he transmitted various documents explanatory of the system of auditing the public accounts of the Kingdom. The Assembly having expressed its belief that the Legislative Council would not assent to any efficient legislation on the subject, the Lieutenant-Governor was empowered, in case of that belief being realized, to constitute a provisional Board of Audit. To remedy another evil which had been complained of—the

withholding of public accounts from the Assembly—it was proposed that a statute should be passed providing the time and manner of making periodical returns, and naming the officers who should render them to the Legislature. Then followed brief instructions to be observed by the Lieutenant-Governor in his intercourse with the Assembly. "You will always," wrote his Lordship, "receive the addresses of the Assembly with the most studious attention and courtesy. As far as may be consistent with your duty to the King, you will accede to their wishes cheerfully and frankly. Should that duty ever compel you to differ from their opinion, or to decline compliance with their desires, you will explain in the most direct, and of course in the most conciliatory terms, the ground of your conduct." His Excellency was instructed to adopt Lord Goderich's despatch to Sir John Colborne of the 8th of November, 1832,* as a rule for the guidance of his conduct. He was directed to select Justices of the Peace without reference to political considerations. In the Grievance Committee's Report, as well as in the Address from the Assembly to the King, great stress had been laid on the mode of appointing members of the Legislative Council. It had been represented that that body had utterly failed to answer the ends for which it had been created, and that the restoration of legislative harmony and good government required its reconstruction on the elective principle.† The inhabitants of the Lower Province felt still more strongly on this subject than did their fellow-colonists in Upper Canada, and had made urgent representations to His Majesty thereupon in ninety-two resolutions which had been adopted by the local Assembly during the session of 1834. "The greatest defect in the constitution of Canada," said they, "is the right of nomination, by the Crown, of the Legislative Councillors." These resolutions had led to the appointment by the Imperial Government of a commission of investigation into the affairs of Lower Canada, and as the principles bearing upon the question of an elective Legislative Council were the same in both Provinces, Lord Glenelg now

* This is the despatch referred to *ante*, p. 246, which had been treated with such contempt by the Law Officers of the Crown, and which had been returned by the Provincial Legislative Council to the Lieutenant-Governor.

† See the 8vo edition of the Report, p. xxxix.

contented himself with appending the instructions issued to the commissioners, and referring to the views therein contained as having received the deliberate sanction of the King. A similar device was adopted with respect to the demand for the control by the Assembly of the territorial and casual revenues of the Crown.

The one great overshadowing question of Executive responsibility was dealt with by Lord Glenelg in a most perfunctory and unsatisfactory manner. It was apparent that he either wholly failed to grasp the real significance of the theme, or that he fenced with it for the mere purpose of beguiling the colonists with a counterfeit presentment. "Experience would seem to prove," he wrote, "that the administration of public affairs in Canada is by no means exempt from the control of a sufficient practical responsibility. To His Majesty and to Parliament the Governor of Upper Canada is at all times most fully responsible for his official acts. That this responsibility is not merely nominal, but that His Majesty feels the most lively interest in the welfare of his Canadian subjects, and is ever anxious to devote a patient and laborious attention to any representations which they may address to him, either through their representatives or as individuals, is proved not only by the whole tenor of the correspondence of my predecessors in this office, but by the despatch which I am now addressing to you. That the Imperial Parliament is not disposed to receive with inattention the representations of their Canadian fellow-subjects is attested by the labours of the committees which have been appointed by the House of Commons during the last few years to inquire into matters relating to those Provinces." It was declared to be the Lieutenant-Governor's duty to vindicate to the King and the Imperial Parliament every act of his administration. In the event of any complaint being preferred against him, his conduct was to receive the most favourable construction. The Assembly, it was said, were at all times able to invoke the interference of the King and Parliament. Every public officer was to depend on the King's pleasure—*i.e.*, upon the pleasure of the Lieutenant-Governor—for the tenure of his office. Certain rules were then laid down, the observance of which, it was said, would produce a system of perfect responsibility. As these rules differed in no essential respect from those which had consistently been acted upon by

Francis Gore, Sir Peregrine Maitland and Sir John Colborne, it was evident that the system of responsibility contemplated by Lord Glenelg was not identical with that desired by Upper Canadian Reformers. Lord Glenelg certainly made good his asseveration that the Upper Canadian Executive were "practically responsible." But to whom were they responsible? To the Upper Canadian people? Not at all. The responsibility was to the King and Parliament of Great Britain—that is to say, to Downing Street, several thousand miles away. Of what avail was such responsibility, guarded, as it was, by secret despatches, "like a system of espionage"?* Had this responsibility to Downing Street ever saved "a single martyr to Executive displeasure"?† Had it been of any avail for the protection of Robert Gourlay, Captain Matthews, Francis Collins or Robert Randal? Had it preserved from the dry pan and the slow fire any one of a score of individuals whose only offence against the State was that they would not willingly sacrifice their rights, and become the tools of venality and corruption? In not one solitary instance had it served any such purpose. Such responsibility was a mockery, "a broken reed, which it would be folly ever again to rest upon."‡ Of real, constitutional responsibility to the people there was not so much as a pretence. "All the powers of the Government," says Mr. Lindsey, "were centralized in Downing Street, and all the colonial officers, from the highest to the lowest, were puppets in the hands of the Secretary of State for the Colonies. At the same time, the outward trappings of a constitutional system, intended to amuse the colonists, served no other end than to irritate and exasperate men who had penetration enough to detect the mockery, and whose self-respect made them abhor the sham." §

In an early paragraph of these instructions, Lord Glenelg had objected, on behalf of His Majesty's Government, to any resort on the part of the Assembly to that ulterior measure—the stoppage of the supplies—to which allusion had been made in the Address of that body, and had referred to it as a proceeding to be justified only by an extreme

* See the rejoinder of certain citizens of Toronto to the reply of the Lieutenant-Governor to their address, dated 25th March, 1836. † *Ib.* ‡ *Ib.*

§ *Life of Mackenzie*, vol i., pp. 345, 346.

emergency. He concluded with an expression of earnest hope that the representatives of the Upper Canadian people would receive with gratitude and cordiality this renewed proof of His Majesty's paternal solicitude for the welfare of his loyal subjects in the Province, and that, laying aside all groundless distrusts, they would cheerfully co-operate with the King and the Lieutenant-Governor in advancing the prosperity of "that interesting and valuable portion of the British Empire."

As already mentioned, the full text of the instructions was communicated by the new Lieutenant-Governor to the Upper Canadian Assembly. Apart from the fact that this proceeding was not warranted either by usage or express permission, it was short-sighted and unwise, for the instructions were not such as to be by any means satisfactory, either to the official party or the Opposition. The Opposition perceived that, under a cover of many fair words and specious phrases, there was very little substantial concession. To the official party it seemed that the spirit of concession was manifested much too strongly, and as the appointment of Sir Francis Head had been hailed by the Reformers as a triumph, anything in the nature of concession, filtered through such a medium, was naturally regarded with strong suspicion. As for Sir Francis himself, his mind seems to have been for some weeks in a chaotic state. He had not been installed in office many days before he had a succession of private interviews with several leading members of the Reform party. In the course of a conversation with Mr. Bidwell, who, it will be remembered, was Speaker of the Assembly, he for the first time became aware that the Report of the Grievance Committee was not recognized by the Reform party as being a complete exposition of the case as between the Home Government and themselves.* He soon after had an interview with Mackenzie, who, in conjunction with Dr. Morrison, was chiefly responsible for the existence of the Report. "I thought," writes Sir Francis,† "that of course he would be too happy to discuss with me the contents of his own book, but his mind seemed to nauseate its subjects even more than Mr. Bidwell's. Afraid to look me in the face, he sat, with his feet not reaching the ground, and with his countenance

**Narrative*, chap. iii. †*Ib.*

averted from me, at an angle of about seventy degrees; while, with the eccentricity, the volubility, and indeed the appearance of a madman, the tiny creature raved about grievances here and grievances there, which the Committee, he said, had not ventured to enumerate." This was a revelation to the Lieutenant-Governor, and set him thinking. He attempted to discuss the merits of the Report with various persons, but encountered what was to him an inexplicable reluctance to talk about it. All were ready to discuss the grievances themselves, but no leading Reformer was disposed to admit the Report into the discussion. The reason of this was doubtless because the Report had been chiefly fathered by Mackenzie, and they were unwilling to accept him as their mouthpiece. As for Mackenzie's own disinclination to enter into a discussion of the matter, it probably arose from a feeling that it would be unwise for him to tie himself down to a particular record, beyond which he would not be permitted to travel. Sir Francis, writing three years afterwards, declares that "the light of truth" at once burst upon his mind, and that he perceived that the Grievance Report was a mere pretext for Rebellion.* It is quite clear that he perceived nothing of the kind, and that "the light of truth" was a mere after-thought with him. It is impossible for one in his sober senses to see what does not exist, and at this time there was no purpose of rebellion in the heart of anyone with whom the Lieutenant-Governor came in contact—not even in the heart of Mackenzie himself, who might easily have been conciliated by wisdom and prudence. Had Sir Francis been half as clever and astute as he professed to believe himself to be—nay, had he even been fairly honest and truthful, and possessed of the most ordinary good sense—there would probably have been no such thing as an Upper Canadian Rebellion.

He had not been a fortnight in the country when suggestions began to be made to him from various quarters as to the membership of the Executive Council. That body, for the nonce, consisted of only three persons, namely, Peter Robinson, Commissioner of Crown Lands; George Herchmer Markland, Inspector-General; and Joseph Wells, Bursar

* *Narrative*, chap. iii.

of King's College. The presence of all three of these persons was necessary to the formation of a quorum, and in case of the illness or unavoidable absence of any one of them the public business would have been interrupted and delayed. Mr. Robinson, moreover, was not only an Executive Councillor, but, as just mentioned, was also Commissioner of Crown Lands. In the former capacity the duty was imposed upon him of taking part in the auditing of his own accounts. This invidious necessity would no longer exist if additional members were appointed, as a quorum could easily be obtained without Mr. Robinson's presence being required at the Council Board. These facts were indisputable, and the argument to be deduced therefrom was unanswerable. Additional Councillors must be appointed. But from what class of the community should they be selected? Sir Francis, the "Tried Reformer," had begun to conceive a distaste for the Reformers of Upper Canada. There seemed to be a natural antagonism between him and them. The reason is not far to seek. Persons of the social grade of Mackenzie were inconceivably odious to this "diner-out of the first water;" while men like Bidwell and Baldwin made him painfully conscious of his own littleness and insufficiency for the task which he had undertaken. Yet he could not venture to call to his Council any of the remnant of the Tory Compact, and thereby utterly ignore the Liberal principles which were presumed to have dictated his appointment. The Tories, moreover, had seen fit to petition the King against his very first administrative act—the appointment of a Surveyor-General. As for the Conservatives, as distinct from the Tories, they had not yet formulated a distinct policy, and none of their leaders had come very conspicuously to the front.

It seemed clear, then, that the choice must be made from the Reform ranks. After much deliberation and inquiry,* the Lieutenant-Governor came to the conclusion that approaches should be made to Robert Baldwin, a gentleman to whom he refers as "highly respected for his moral character, being moderate in his politics, and possessing the esteem and confidence of all parties."† His Excellency's resolve on this subject was approved of by the Speakers of the two Houses, as

* See Head's despatch to Lord Glenelg, dated February 22nd, 1836, in *Narrative*, chap. iv.
† *Ib.*

well as by the three members of the Council, to all of whom the project was submitted before any attempt was made to carry it out. When the proposal was made to Mr. Baldwin it was received by him with becoming respect, but with a coolness of demeanour which was far from flattering to the vanity of Sir Francis, who seems to have expected that the recipient would be well-nigh overwhelmed by the honour. The latter stated that he was very reluctant to again embark in public life, and he explained his views on the political situation with great frankness. There were several interviews, in the course of which Sir Francis did his utmost to induce Mr. Baldwin to accede to his wishes. Mr. Baldwin required time for consideration, an indulgence which was of course accorded. The Lieutenant-Governor being anxious to carry his point, sent for Mr. Baldwin's father, Dr. W. W. Baldwin, for the purpose of securing his influence in the negotiations. Father and son were both of one mind. There was little or nothing in common between the political sentiments of the three members of the existing Executive Council and the man whom it was proposed to add to their number. How, then, could it be expected that they would agree as to the policy of the Administration. If they did not agree, what would Mr. Baldwin's single voice avail against the other three? And, even admitting that this anomaly could be got rid of, it was deemed necessary that there should be some understanding on the subject of Executive responsibility before Mr. Baldwin could consent to accept a seat in the Council. He and his father, from whom his political ideas had been chiefly derived, had for years contended that Responsible Government already existed in Upper Canada by virtue of the Constitutional Act, and that when a Government failed to command a majority of votes in the Assembly it was legally bound to resign. It was of course notorious that this principle had never been recognized by the Provincial Administration, but Mr. Baldwin was of opinion that the constitution had been systematically violated in this particular. In talking over the matter with the Lieutenant-Governor he now discovered that the latter was entirely unacquainted with constitutional questions, and that he had no ideas on the subject whatever, beyond such as he had picked up within the past few days. Still, his Excellency's good temper, and his seeming

anxiety to do his duty, won upon the sympathies of Mr. Baldwin, who naturally felt desirous to be of service to a man who had come to Canada in the guise of a tried Reformer, and who professed to be actuated by a sincere desire to govern the colony on Liberal principles. After several courteous refusals, and after much consideration and repeated consultations with his friends, Mr. Baldwin consented to accept office, provided that seats in the Council were at the same time offered to his father, and to Dr. Rolph and Mr. Bidwell. Dr. Baldwin was so unwilling to accept the cares of office that his name was dropped by common consent. To Dr. Rolph no objection was felt, but his Excellency had conceived an antagonism towards Mr. Bidwell, with whom he had had frequent interviews, and who had not scrupled to express himself with much freedom on the necessity for a regular system of Provincial Reform. After considerable discussion, it was agreed that John Henry Dunn, the Provincial Receiver-General, should be substituted for Mr. Bidwell. Mr. Dunn was not a member of any political party, nor had he any special aptitude for political life; but he was a man of high character and moderate views, and was held in much public estimation. On Saturday the 20th of February the three new Councillors were sworn into office and gazetted, "until the King's pleasure be known."* The three old members retained their places.

This manifestation of a resolve to carry on the Government of the Province by means of Councillors possessing the public confidence was hailed with great favour by the Reform party, and indeed by the Conservatives as well, for Messieurs Baldwin, Rolph and Dunn were persons for whom the highest respect was felt by all classes of the community, and were regarded as being altogether above suspicion. Even the members of the Compact were disposed to favour the arrangement, for, in consequence of rumours which had reached their ears, they had dreaded that the Lieutenant-Governor might possibly ally himself with the Radicals, who, if placed in power, would have done their utmost to exact a reckoning for past abuses. Upon the whole, then, Sir Francis had

* See the extra number of the *Gazette* issued on that date. A very full account of the negotiations and conferences which led to this result will be found in a letter written by Robert Baldwin to Peter Perry, dated "Front Street, 16th March, 1836," and published in the papers of the time. See *post*, p. 312.

materially strengthened his position. But the strength was fictitious rather than real, and the baseless fabric which he had reared with such pains quickly tottered and fell. The three new Councillors were not long in discovering that their places were sinecures. His Excellency wanted none of their counsel, and had no intention of permitting them to have any real voice in the carrying-on of the Government. To one person only did he apply for advice in every emergency. That person was not a member of the Government, and was therefore an unsworn counsellor, under no semblance of responsibility to anybody. He was a power behind the throne, with all the privileges and none of the disabilities attaching to such a position. The gentleman elevated to this anomalous dignity was Chief Justice Robinson, Speaker of the Legislative Council, the master-spirit of the Family Compact, and the life-long champion of those very abuses which the "Tried Reformer" was currently supposed to have been sent out to remove. The Councillors, old as well as new, were treated as mere figure-heads. They were consulted about land matters and insignificant questions of detail, but the policy and measures of the Government seldom passed under their review, or were submitted to them for advice.* Some of these measures were such as they could not approve or sanction. His Excellency nominated two adherents of the old official party to vacant offices upon which they had no sort of claim. He refused the royal assent to the Felons' Counsel Bill, a measure "demanded by justice and humanity, and passed for more than ten years, almost unanimously, by repeated and different Houses of Assembly."† The Councillors were thus made to seem responsible for acts over which they had no control, and of which some of them, at least, highly disapproved. The Reform party were astonished to see such things done under the auspices of a Government of which Robert Baldwin and Dr. Rolph were members. They however acquitted both those gentleman of having advised such acts. It was believed by Reformers generally that the three new Councillors were not consulted,

* See the representations of the Councillors to the Lieutenant-Governor, dated Friday, 4th March, 1836.

† See *Report of the Select Committee to which was referred the Answer of His Excellency the Lieutenant-Governor to an Address of the House of Assembly, relative to a Responsible Executive Council*, p. 6. Toronto, 1836.

or else that the old members, with the umpirage of the Lieutenant-Governor, predominated.*

This state of things could not be allowed to continue. The Executive Councillors consulted together, and determined upon a remonstrance with the Lieutenant-Governor. This remonstrance was formally prepared in writing, and sent in to his Excellency on Friday, the 4th of March. The three old members concurred in it, and it was signed by all the six in order of seniority. The mere fact of this concurrence affords strong evidence of the growth of the power of public opinion in the Province. In past times members of the Executive Council had been content to pose as figure-heads year after year, while John Beverley Robinson and one or two others manipulated and directed the whole course of public affairs. It is probable, however, that in the present instance the three senior Councillors may have been influenced by the arguments of Baldwin and Rolph, who felt very strongly on the question at issue.

The Lieutenant-Governor's reply, every paragraph of which bears evidence of the Chief Justice's cunning hand, is dated on the following day, but was not actually communicated until the next regular Council day, which was Thursday, the 10th. It contained a firm but courteous expression of his Excellency's dissent from the opinions expressed by the Executive Councillors as to their privileges and duties. It was contended that the Lieutenant-Governor was the sole responsible minister, and the difference between the constitution of the mother-country and the colony was referred to as being highly advantageous to the latter. His Excellency, it was said, was only bound to consult his Council when he felt the need of their advice, and to do so on the innumerable subjects upon which he was daily compelled to decide would be "as utterly impossible as for any one but himself to decide upon what points his mind required or needed" advice. The position taken by the Councillors was declared to be unconstitutional, but his Excellency informed them that his estimation of their talents and integrity, as well as his personal regard for them, remained unshaken, and that he was not insensible

* *Ib.*, p. 7.

to the difficulties to which he would be exposed should they deem it necessary to resign. He added, however, that should they be of opinion that their oaths required them to retire from office, he begged that they would not on his account hesitate to do so. As they were very strongly of that opinion, they waited on his Excellency on Saturday, the 12th, and tendered their resignations, which were accepted. They had held office precisely three weeks.

The clue to this puzzle is easily found. Sir Francis had conceived an utter distaste for the persons and political principles of the Reformers of Upper Canada. There was an inherent antagonism between the nature of this shallow, feather-brained sketcher by the wayside and the natures of men like Rolph, Bidwell and the Baldwins, whose quiet earnestness and fixity of purpose had been intensified by the long course of injustice to which they, in common with their party, had been subjected. The earnestness of these gentlemen presented itself to him in the light of importunity, if not of impertinence. He could hardly be expected to sympathize very strongly with their unconquerable zeal for principles which he did not understand: which he was perhaps incapable of understanding. Then, Sir Francis was an eminently social personage, and the social qualities of the leaders of Upper Canadian Reform were not of a high order. To them, small talk across the walnuts and the wine seemed utterly incongruous in view of the momentous public questions which were urgently pressing for a solution. In this particular they presented a marked contrast to the leading spirits of the Compact. The Robinsons, Hagermans and Sherwoods, one and all, could not only advise the Lieutenant-Governor on the affairs of the Province, but could be pleasant and entertaining companions. They were not very different from the county magistrates and other officials with whom he had been accustomed to confer in his capacity of a poor-law commissioner. They were moreover exceedingly diplomatic. They saw the importance of winning him to their side, and governed themselves accordingly. They lost no opportunity of making themselves agreeable to him. Instead of boring him with what, to his understanding, seemed abstruse speculations on executive responsibility and an elective Legislative Council, they scouted such doctrines as myths begotten in the moody brains of unpractical and

discontented men. The wide knowledge, long experience and specious eloquence of the Chief Justice enabled him to present the Tory side of these arguments with much plausibility. Sir Francis soon became convinced that the issue was not merely between two sides of colonial politics, but between monarchy and republicanism, between loyalty and disloyalty, between Great Britain and the United States. As he afterwards declared, he believed that he was "sentenced to contend on the soil of America with Democracy,*" and that if he did not overpower it, he would himself be compelled to succumb. Having brought himself to this conclusion, he not unnaturally preferred the *rôle* of the hammer to that of the anvil. It was surely better to strike than to be struck. Acting on this principle, he made a complete surrender of himself to the Family Compact, and from that time forward was in all essential respects guided by their counsels. His rashness and impetuosity sometimes led him to act on his own motion, and without waiting to take counsel from any quarter; but in all ordinary affairs of administration he was guided by Sir John Robinson quite as effectually as Sir John Colborne had ever been.

No sooner was it announced that the Executive Councillors had all resigned office than the public pulse began to beat at an accelerated pace. The excitement was greatly intensified upon the publication of a letter written by Robert Baldwin to Peter Perry, in which, by the Lieutenant-Governor's special permission, all the attendant circumstances were set forth in detail. This letter, having been written for the express purpose of being read by Mr. Perry from his place in the Assembly, and of being afterwards published in the newspapers, is somewhat formal and official in its tone, but it presents the subject-matter in a clear light, and must be regarded as an important contribution to the history of Responsible Government in Upper Canada. It is the chief, indeed the only trustworthy original authority for the facts as to the precise dispute between Sir Francis and his Council, for the former's account† is more than usually incomplete and one-sided when dealing with this episode. The essential portions of Mr. Baldwin's presentation of the case have been embodied in the foregoing narrative.

* *Narrative*, chap. v. † *Narrative*, chapters iv., v.

The Lieutenant-Governor lost no time in providing himself with a new Council. On the 14th of March, when the resignation was only two days old, an extraordinary issue of the *Gazette* announced that Robert Baldwin Sullivan, John Elmsley, Augustus Baldwin and William Allan had been appointed members of the Executive Council of the Province. The reader has already made the acquaintance of all these gentlemen with the exception of Augustus Baldwin, who was a retired naval officer of high character, but of no particular politics; a brother of Dr. Baldwin, and by consequence an uncle of Robert Baldwin. All four of the new Councillors were persons of character and position, but they were not in sympathy with the Liberal sentiments of the period, and the people generally were not disposed to place any political confidence in them. Elmsley and Allan were consistent, old-fashioned Tories. Baldwin's leanings, so far as he had any, were in the same direction. Sullivan's youth and early life had been passed amid more or less Liberal influences, but of late he had shown a retrogressive tendency in political matters. This was largely due to personal rivalry between Mackenzie and himself in municipal affairs. As previously mentioned, he had defeated Mackenzie at the municipal elections for St. David's Ward, and had been elected mayor of Toronto in the beginning of 1835. The contest had been waged between them with unseemly rancour. Sullivan had denounced Mackenzie as a noisy upstart and demagogue; while Mackenzie had characterized Sullivan as an oily-tongued, unprincipled lawyer, who would lie the loudest for the client who had the longest purse. All Mackenzie's supporters during the contest had been Radicals, or at least persons of strong Reform proclivities. This had arrayed the whole Tory and Conservative vote on the side of Sullivan, who was thus in a measure brought under anti-Reform influences. His social tastes also inclined him in the same direction, so that he soon came to be classed as a Conservative. Reformers were disposed to look askance at him as a political renegade, and this disposition was increased upon his acceptance of office under Sir Francis Head at the present juncture. He alone, of all the new Councillors, was a man of exceptional ability. He was not inaccurately described, a few years later, as "an Irishman by birth, and a lawyer by profession; a man who, if he had united

consistency of political conduct and weight of personal character with the great and original talents which he unquestionably possessed, might have taken a conspicuous part in the public affairs of any country." *

These transactions—the resignation of the Councillors and the appointment of their successors—produced a tremendous effervescence of feeling among the Opposition in the Assembly, who had already conceived strong suspicions of the Lieutenant-Governor's motives. But the excitement was not confined to the Opposition. It was participated in by the Conservatives, and, even, for a time, by most of the ultra-Tories. On the 14th of March, the House, by a vote of fifty-three to two, adopted a resolution unequivocally assertive of the principles which the ex-Councillors had endeavoured to maintain. Ten days later an address to the Lieutenant-Governor, based on this resolution, was passed by a vote of thirty-two to nineteen. It expressed deep regret that his Excellency had consented to accept the resignation of his late Council. It declared the Assembly's entire want of confidence in the new appointments, and humbly requested that immediate steps might be taken to remove the new Councillors from office. Meanwhile, petitions on the all-engrossing subject poured into the Assembly from all over the Province.† Public meetings were called in Toronto, as well as in some other of the principal towns, at which resolutions were passed echoing the Assembly's address, imploring the Lieutenant-Governor to dismiss his present advisers, and to call to his Council gentlemen possessing public confidence.

One of these gatherings tended in an especial manner to widen the irreparable breach between Sir Francis Head and the Reform party. On the 25th of March a meeting was held in the City Hall, Toronto, at which an Address to his Excellency of exceptional significance was passed. It dealt at considerable length with the constitutional question at issue; referred to Responsible Government as having been introduced by the Constitutional Act; expressed surprise and sorrow at the resignation of the late Councillors, and an entire want of confidence in

* Kaye's *Life and Correspondence of Charles, Lord Metcalfe*, vol. ii., p. 339. Revised edition, 1858.

† It is fair to say that some of these were due to the efforts of the Radicals in the Assembly, who had sent out blank petitions to local friends, with instructions to obtain signatures and fill in the name of the constituency.

their successors. It deplored the apparent fact that his Excellency was acting under the influence of evil and unknown advisers. In conclusion, it claimed all the rights and privileges of the British constitution, and that the representative of the Crown should be advised by men known to and possessing the confidence of the people. When the deputation called at Government House to present this Address, they were treated with an off-hand abruptness and *brusquerie* which gave them much offence. The reply of his Excellency was wordy and unsatisfying in tone; but its most objectionable feature was the air of assumed superiority by which it was pervaded. It referred to the meeting represented by the deputation as having been composed principally of "the industrious classes," but added, with a seeming loftiness of condescension, that the Address should be replied to with as much attention as if it had proceeded from either of the branches of the Legislature—"although," said his Excellency, "I shall express myself in plainer and more homely language." This was bad enough, but its effect was intensified by the demeanour of the Lieutenant-Governor and several military officers who were in attendance upon him. It seemed to the deputation that those gentlemen regarded them with supercilious impertinence; as a something which viceroyalty must be content, for the nonce, to endure, but as being altogether beyond the pale of their sympathies or interests. Nothing could have been in worse taste than such conduct as this, though it is possible enough that more sensitiveness was displayed than was called for by the actual circumstances. The deputation withdrew, cut to the quick by the indignities which they, rightly or wrongly, conceived themselves to have sustained. On the succeeding evening a meeting of themselves and some of their friends was held at the house of Dr. Morrison—who was now mayor of the city—at which a bitterly sarcastic rejoinder was prepared. It thanked his Excellency for replying to an Address from "the industrious classes" with as much attention as if it had proceeded from either branch of the Legislature, and acknowledged his condescension in expressing himself in plain and homely language—language presumed to be brought down to the level of the plain and homely understandings of his interlocutors, whose deplorable want of education was accounted for by the maladministration by

former Governments of the endowments of King's College, and by the impossibility of obtaining a sale of the Clergy Reserves and the appropriation of the proceeds to educational purposes. "It is," proceeded this cutting rejoinder, "because we have been thus maltreated, neglected and despised, in our education and interests, under the system of Government that has hitherto prevailed, that we are now driven to insist upon a change that cannot be for the worse." Reference was made to the desire to bring about a system of Responsible Government, and the utter futility of mere responsibility to Downing Street was pointed out with a pointed eloquence which proved that the signatories were in deadly earnest. The misgovernment of Dalhousie and Aylmer in Lower Canada, and of Gore, Maitland and Colborne in Upper Canada, was touched upon in a few brief, vitriolic sentences. It was shown that, though these gentlemen had been responsible to Downing Street, they had not only met with no punishment, but had actually been promoted to higher honours. "We do not mean," said they, "in our plain and homely statement, to be discourteous, by declaring our unalterable conviction that a nominal responsibility to Downing Street, which has failed of any good with the above gentlemen of high pretensions to honour, character and station, cannot have any magic operation in your Excellency's administration, which, should it end as it has unhappily begun, might make us drink the cup of national misgovernment to the very dregs, without (as experience proves) redress on our part, or retribution on yours." There was much more of the same sort. The document concluded by stating that if the Lieutenant-Governor would not govern upon sound constitutional principles he would violate the charter, virtually abrogate the law, and justly forfeit submission to his authority.

This was beyond doubt the most vigorously-written protest that had ever been presented to an Upper Canadian Lieutenant-Governor. It was signed by Jesse Ketchum, James Hervey Price, James Lesslie, Andrew McGlashan, James Shannon, Robert McKay, M. McLellan, Timothy Parsons, William Lesslie, John Mills, E. T. Henderson, John Doel, John E. Tims, and William J. O'Grady. All these were ardent Radicals, and coadjutors of Mackenzie. Two of them—Jesse Ketchum and James Lesslie—delivered the rejoinder at Government House, without waiting

for a reply. It was already in type, and during the next day was widely read and commented upon. The Lieutenant-Governor was not insensible to its cutting irony, but it did not admit of any sur-rejoinder, and after the first transient ebullition of his wrath, the matter, so far as he was concerned, was quietly permitted to drop out of sight. The document, however, acted as an additional stimulus to the public excitement, and it continued to be quoted against Sir Francis from time to time so long as he remained in the colony.

While these events were occurring the Provincial Legislature still remained in session. A Committee having been appointed by the Assembly to consider the correspondence between the Lieutenant-Governor and the ex-Councillors, it proceeded to deal with the question in the usual manner. The report was presented to the Assembly on the 18th of April. In the course of the debate which ensued, several eloquent speeches were made on the Tory side. The most effective Tory arguments were founded upon the assumption that the concession of Responsible Government would be a mere preliminary to separation from the mother country. The speech made by Mr. Hagerman on this occasion was one of the most brilliant efforts of his life. Mere verbal eloquence, however, exhausted itself in vain. The report was adopted by a vote of thirty-two to twenty-one. It was even more directly condemnatory of the Lieutenant-Governor than the rejoinder above referred to had been. It expressed the Committee's belief that the appointment of the three ex-Councillors had been a deceitful manœuvre to gain credit with the country for Liberal feelings and intentions where none really existed. The question of Executive responsibility was gone into at considerable length, and the conduct of the ex-Councillors was approved of in every particular. There is no need to analyze the entire report, which was long and exhaustive. It distinctly recommended the withholding of the annual supplies. The Assembly, by adopting the report, and by committing itself to this extreme measure, proved that, in the language of Lord Glenelg's instructions,* it regarded the present in the light of "an emergency." The supplies, however, were not

* *Ante*, pp. 303, 304.

entirely withheld. Money was granted for the construction of roads, for schools, for the improvement of navigation, and other useful purposes; but all these grants were nullified by the Lieutenant-Governor, who signified his disapprobation of the Assembly's conduct by refusing his assent to the money-bills of the session. He afterwards stated as one of his reasons for this refusal that he had good grounds for believing a portion of the money would have been spent by the Assembly in sending an agent to England *—which was probably the fact.

The Assembly, feeling that some reason should be assigned for their action in the matter of the supplies, which were now withheld for the first time in the history of Upper Canada, passed an Address to the King, in which the Lieutenant-Governor's conduct was painted in no neutral tints. He was directly charged with being despotic, tyrannical, unjust and deceitful. His conduct was declared to have been "derogatory to the honour" of his Majesty, and "demoralizing to the community." A memorial to the House of Commons was also adopted, in which his public acts were referred to as having been arbitrary and vindictive, and wherein he was charged with mis-statements, misrepresentations, and "deviations from candour and truth." This bitterly-worded memorial was formally signed by Mr. Bidwell as Speaker of the House—a circumstance which was long remembered against him by the person implicated.

It must have been gall and wormwood to Sir Francis to be compelled to forward these documents to the Colonial Office. It was the first time that clear and undisguised charges of so humiliating a nature had been officially laid against a colonial Lieutenant-Governor, and one must needs confess that nothing short of the most unassailable evidence could have justified the employment of such terms in a communication between two representative bodies respecting a trusted servant of the Crown, more especially in the case of one occupying so lofty a position. Something is due to the proprieties, and to accuse a man of deviations from candour and truth is of course merely a slightly periphrastic method of charging him with falsehood. The Assembly, however, had become convinced, not without reason, that Sir Francis's word was not to be

* See his despatch to Lord Glenelg, dated April 28th, 1836, in *Narrative*, chap. v.

trusted. Other persons who had been brought into more or less intimate relations with him had been driven to the same conclusion.* The fact is that when his feelings were much stirred he knew not how to speak the language of truth and soberness. He talked so much and so thoughtlessly that he very frequently gave utterance to the thing which was not. Some excuse might perhaps be made for one who, in the heat or haste of verbal controversy, gives currency to erroneous statements. But Sir Francis's mis-statements were not confined to verbal controversy. He had been distinctly convicted of "a deviation from candour and truth" in a deliberate official communication. The Assembly had requested that they might be furnished with copies of any bond or agreement between him and his Councillors respecting the administration of the Government in the event of his Excellency's death or removal. To this request Sir Francis had replied, explicitly denying the existence of any document of such a nature. Yet upon the examination of certain of the Councillors it had been proved that an agreement on the subject had actually been made, and that it had been reduced to writing by his Excellency's own hand. The devices to which he had had recourse in his attempts to prove that he had merely been guilty of tergiversation instead of downright lying, were such as positively to aggravate the original offence, and to fully justify the Assembly in refusing to attach any weight to his unsupported statement upon any subject.† As the weeks passed by, the quarrel between him and the Assembly waxed positively ferocious. On the 20th of April he prorogued Parliament, making a speech on the occasion which must have occupied a full hour or more in delivery, and wherein he reviewed, in his own inimitable fashion, and from his own point of view, the various events by which his Administration had up to this time been characterized. Any attempt to analyze it here is altogether out of the question. It should be read in its entirety in the official Journal of the session.

*Sir Francis himself has gravely recorded that certain militia officers publicly declared him to be "the d——dest liar and d——dest rascal in the Province." See despatch of 6th February, 1837, in *Narrative*, chap. ix.

† The evidence will be found in appendix to Journal of 1836, 2nd Session, Twelfth Parliament, vol. iii., No. 106, pp. 57, 58.

During the weeks following the prorogation the public excitement continued to increase, until it had reached a height without precedent in the history of the Province. The Reformers felt that they had been wofully deceived in the Lieutenant-Governor, and many of them placed no bounds to their censure. Some of the Reform newspapers hinted pretty strongly that no people could be expected to remain permanently loyal when they were deprived of their rights year after year, and when all their petitions were set at naught. The political atmosphere was charged with electricity. The outlook was lurid and ominous. Some of the loyalists began to dread an actual uprising of the people. Such an uprising, they thought, would be a legitimate sequel to so extraordinary a proceeding as the stoppage of the supplies. To not a few well-meaning but old-fashioned people the mere act of refusing to vote the supplies was in itself a species of treason. To more practical people this act presented itself in a different aspect. It seemed to them indicative of a niggard and ruinous parsimony. They gazed with ill-concealed envy at the marvellous prosperity of the neighbouring State of New York. Any one crossing the Canadian frontier in that direction at once became aware that he had passed from a land of comparative stagnation to a land of activity and progress. This contrast had been largely brought about by the construction of great public works, and a lavish policy on the part of the State Legislature. There seemed no reason to doubt that the adoption of a similar policy would bring about similar results in Upper Canada, where large and costly public works were urgently needed for the proper development of the resources of the colony. But, instead of liberal grants of money for such purposes, the Assembly had cut down the supplies to meet the barest works of necessity. The colony could never hope to hold up its head by the side of its enterprising neighbour while such a cheese-paring system prevailed.

The Lieutenant-Governor's advisers were shrewd enough to make the most of this unpromising state of affairs. The cheese-paring policy went for something, but it was almost lost sight of in the much more effective imputation of disloyalty to the Empire. Nothing was so certain to turn the scale of public opinion in favour of his Excellency as an apparently well-founded stigma of disloyalty cast upon his opponents. The

official party accordingly set themselves deliberately to work to disseminate the belief that the bulk of the Opposition were ripe for treason, and that, under the guise of agitation for Reform, they concealed a design of effecting the separation of the colony from Great Britain. It is not improbable that many of those who industriously circulated the report did so in good faith, for the language of some of the Reformers, used in moments of irritation, was of a nature to lead to such a conclusion. No sooner did this report gain credence than there was a very perceptible turning of the scale of popular opinion. Many who had grumbled loudly at Sir Francis's conduct now declared themselves as being on his side. They favoured the doctrine of a responsible Executive, but devotion to the mother country was as the breath of their nostrils. Whatever tended to relax the tie which bound the colony to the Empire was a thing to be utterly opposed and stamped out. The domination of the Compact was bad, but even at its worst it was better than separation. So argued many persons who had always been conspicuous for the moderation of their political views. The official party of course turned such sentiments as these to the utmost account. The cry of disloyalty was heard on every side. The state of the Lower Province, which was rapidly gliding into insurrection, was triumphantly pointed to as evidence of what was to be looked for if democratic ideas were allowed to make headway. Twice within the last four years had the Lower Canadian Assembly resorted to the extreme measure of refusing to grant supplies to the Government. By so doing they had embroiled themselves with the Imperial Ministry, and drawn down upon themselves the indignation of persons of moderate views. It was no secret that the Upper Canadian Reformers generally were in sympathy with the projects of Reform entertained by the Lower Canadian agitators; and it suited the Tories to assume that the sympathy extended not only to legitimate projects of Reform, but to less openly-avowed schemes of rebellion. Just before the prorogation Mr. Bidwell had laid before the Assembly a letter written by Louis Joseph Papineau, Speaker of the Lower Canada Assembly, wherein the great agitator had given utterance to sentiments which, read in the light of subsequent events, cannot be construed otherwise than as treasonable. Several members of the

Reform party had publicly spoken enthusiastically of M. Papineau, and had even gone so far as to express approbation of his most indiscreet and objectionable language. This circumstance was now urged to show that the objects of the anti-Executive party in both Provinces were identical. There was no attempt to discriminate between constitutional Reformers of the Baldwin stamp and advanced Radicals like Mackenzie. All were included in one sweeping verdict as "disloyal" persons, against whom it was necessary for right-minded citizens to organize in self-defence.

Early in May these sentiments began to find expression in outward acts. A number of Tory gentlemen of Toronto formed themselves into what they called the British Constitutional Society, with the fundamental principle and object of perpetuating the connection between Upper Canada and the United Kingdom. A society bearing the same name had been formed upon the breaking out of the War of 1812, and this of 1836 professed to be a reorganization of the former one. In reality, however, it was to all intents and purposes a new society, started for the specific purpose of opposing the cry for Responsible Government, and of gaining support for Sir Francis Head. During the previous year, Colonel Fitzgibbon had, under Sir John Colborne's auspices, formed a drill corps for such young men of Toronto as desired military instruction. A handful of well-connected young men had availed themselves of the opportunity. The Colonel now devoted himself with redoubled ardour to preparations for the insurrection which he declared would burst forth before the next winter. He got together a rifle corps to the number of seventy, and drilled them twice a week with tireless enthusiasm, declaring that when the hour of trial should come, he and "his boys" would be found in their places, however the rest of the community might see fit to demean themselves.

Notwithstanding these preparations, and the prevailing sentiments which inspired them, it is doubtful whether the idea of rebellion had up to this time taken definite possession of the mind of a single human being in Upper Canada. There seems abundant reason for believing that the time for wise concession was not past, and that a prudent and discreet Administrator might have restored tranquillity to the land without

going an iota beyond the scope of Lord Glenelg's instructions. But Sir Francis Head acted in no such spirit. He set his mind firmly against concession, feeling convinced, as he said, that the more he yielded the more would be demanded of him. In this respect he—no doubt unconsciously—emulated the example of James the Second, who was of opinion that his father owed the loss of his head to his concessions to the House of Commons. That this opinion was altogether erroneous does not admit of argument. Sir Francis was equally wrong, and equally stubborn in maintaining his opinion. His conduct was the last straw heaped upon the back of the much-enduring camel, and the outbreak which followed must in large measure be attributed to his misgovernment.

CHAPTER XVI.

THE TRIUMPHS OF A TRIED REFORMER.

WHILE the public excitement continued unabated, the Lieutenant-Governor resolved upon a step which was little calculated to allay it. This step was the dissolution of the existing Parliament. He and his advisers, sworn and unsworn, believed that the time was opportune for a general election. If the numerical majority of the Opposition in the Assembly were reversed, the Government could afford to laugh at what they called "low-bred democracy." Such a reversal, it was thought, might now be effected. The disloyalty cry might safely be trusted to do its work, not only by clearing the Assembly of the chief members of the Opposition, but by giving the Government party an easy working majority. In order, however, that his Excellency might seem to be following public opinion in this matter instead of guiding it, the official party caused petitions to be sent in from various quarters, praying that a dissolution and a general election might take place. This not only served the intended purpose of misleading the public as to the designs of the Executive, but also afforded Sir Francis an opportunity of pouring out oceans of words in the form of replies. The concluding sentence of his reply to an address from certain electors of the Home District is eminently characteristic of the man. Portions of the already-mentioned letter from Papineau to Bidwell had seemed to point to a possible invasion of the Province by inhabitants of the United States. This idea was eagerly seized upon by Sir Francis, as indicative of concerted action between the hypothetical invaders and the Upper Canadian Radicals. "In the name of every regiment of militia in Upper Canada," said he

—"*Let them come if they dare!*"* Nothing but actual perusal of his despatches will afford any accurate idea of his blatant self-confidence at this time. It is quite evident that he regarded the above-quoted reply as a master-stroke of vigorous diplomacy. He drew special attention to it in a communication to Lord Glenelg, in the course of which he made use of language which must have almost stunned the conventional and decorous Colonial Secretary. "I am aware," he wrote, "that the answer may be cavilled at in Downing Street, for I know it is not exactly according to Hoyle. *Mais, mon seigneur, croyez-vous donc qu'on fasse des révolutions avec de l'eau de rose?*"† The tone of his despatches is from first to last extraordinary. It would seem as if they ought to have told their own miserable tale of superficiality and unfitness to the Colonial Secretary. In announcing the probability of an early dissolution of the Provincial Parliament, Sir Francis requests his Lordship to send him no orders on the subject, but to allow him to work the matter in his own way.‡ The Opposition are constantly referred to in such phrases as "the republicans in the House of Assembly," and "the revolutionists of Upper Canada."§ His Lordship is warned that if the demands of the Opposition be complied with in the matter of Executive responsibility, "democracy, in the worst possible form, will prevail in our colonies."‖ "In South America," he remarks, "truth and justice carried me through difficulties even greater than those I have now to contend with, and I have the firmest reliance they will again be triumphant."¶ In another despatch** his Lordship is notified that Robert Baldwin, who is referred to as an agent of "the revolutionary party," is about to start for London. "It is stated," writes Sir Francis, "that he goes there for the recovery of his health, but it is acknowledged by his party that he will be prepared to answer any questions which the Government may feel disposed to put

* Sir Francis afterwards denied that this challenge was addressed to the Americans. See his despatch to Lord Glenelg dated 6th November, 1836, embodied in his *Narrative*, chap. vi. But it is quite evident that the denial, as well as the construction there sought to be put upon his language, was an afterthought. If, as he there asserts, "the Americans had no more to do with the subject than the Chinese," there was no appropriate significance whatever in his doughty defiance.

† See despatch of May 28th.

‡ See despatch of 21st April.

§ *Ib.* ‖ *Ib.* ¶ Despatch of May 28th. ** Of April 28th.

to him." This intimation is followed by the expression of a confidence that his Lordship will discountenance "the system of sending agents from the British North American colonies, and their being received by the Government." A hope is expressed that should Mr. Baldwin directly or indirectly communicate with the Colonial Office during his stay in England, he may be effectually sat upon, and that he may receive "that style of answer," a copy of which may be transmitted to Sir Francis, and published in the Canadian papers, as a means of deterring further "left-handed attacks upon the constitution." It may be added that the expression of confidence above referred to was justified by the result, as Mr. Baldwin, during his stay in England, was not admitted to an interview with Lord Glenelg, though a written statement of his views was received by his Lordship, and submitted to the Cabinet.

The Reformers, moderate and radical, were brought closer together by the agitated state of the public mind, and by the efforts of the official party to destroy their influence. Several weeks before the dissolution actually took place it became known that such a step was imminent, and quiet preparations were made for the general election which was to follow. The formation of the Canadian Alliance Society by the Radicals, towards the close of 1834, has already been referred to.* Neither the platform of this society nor the mode of conducting it was such as to commend it to Reformers generally, and it was now deemed advisable to organize a new association on a broader basis, with a special eye to coöperation with Reformers who resided in the rural districts. This was accordingly done under the auspices of some of the leading Reformers of Toronto. In contradistinction to the British Constitutional Society mentioned towards the close of the last chapter, the new association was called the Constitutional Reform Society. Dr. Baldwin accepted the Presidency, and Francis Hincks, who was then engaged in commercial life in Toronto, was appointed Secretary. Steps were taken to counteract the misrepresentations of the official party, and generally for the efficient maintenance of the impending election campaign. The Reformers seem to have greatly

* *Ante*, p. 281.

underestimated the efforts of their opponents. As the event proved, they were also hopelessly astray in gauging the public opinion of the Province, for they looked forward to the approaching contest with the utmost confidence in the result. The new society, it was thought, would accomplish wonders in the way of thorough organization, and it was confidently believed that the existing Reform majority in the Assembly would be fully maintained, if not increased. The efforts of the official party to spread a belief prejudicial to the patriotism of the Reformers were laughed to scorn. So also was the attempt of the Lieutenant-Governor to imbue the inhabitants with a belief in the probability of a foreign invasion. Upon the promulgation of the challenge to the imaginary invader, a number of the Toronto Reformers, with Mr. Hincks at their head, amused themselves by perpetrating a practical joke. Having taken counsel together, they formed themselves into a deputation, and called upon his Excellency in a state of well-assumed perturbation. In a formal address they expressed much solicitude on the subject of the contemplated invasion. They professed to re-echo his unbounded confidence in the Provincial militia, but begged to be informed of the quarter whence the attack was anticipated. "We do not doubt," said they, in their Address, "the readiness with which would be answered upon any emergency your appeal to the militia, which appeal we are satisfied would not have been made without adequate cause. In a matter so seriously affecting the peace and tranquillity of the country, and the security of its commerce, we beg to learn from your Excellency from what quarter the invasion is alleged to be threatened." To this not unreasonable demand the Lieutenant-Governor was unable to make any definite reply. The absurdity of his challenge was for the first time fully brought home to him. According to the testimony of eye-witnesses, he "did not sit, but stood with that personal oscillation which you witness in a man so situated as not well to know what to say or what to do."* When at last his reply came, it proved to be the briefest and most sensible of all his replies. "Gentlemen," said he, "I have no further observations

* See Dr. Rolph's *Speech to the House in Committee on the Report of the Select Committee on the Petition of Dr. Charles Duncombe to the British House of Commons*, delivered on Monday, January 30th, 1837.

to make to you on this subject." The deputation, struggling with suppressed laughter, withdrew.

The Provincial Parliament was dissolved on the 28th of May, and as it was thought desirable to strike while the iron was hot, the elections were hurried on with unseemly haste. They began on the 20th of June, and all the returns were in during the first week in July. The issue was an exciting, but not a doubtful one, for the official party entered upon the contest with loaded dice and a determination to win. Numerous attempts have been made to explain and excuse their conduct during this eventful epoch; but it is impossible to blink the fact that the result was a foregone conclusion from the very moment of the issue of the writs. The whole weight of the Government was put forward to ensure the return of Tory candidates, and this was done in the most direct and shameless manner. The Lieutenant-Governor openly made himself a party to the contest. His replies to the various addresses which he had himself promoted were one and all set to the same tune.* The issue was presented in such a light that no inconsiderable part of the population were led to believe that the maintenance of British connection depended upon the result of the contest. Owing to the representations of Government emissaries, backed by the Tory press, and reinforced by the inflammatory speeches and addresses of the Lieutenant-Governor, it was widely believed that should the Reformers succeed there would be a speedy uprooting of cherished institutions, followed by separation from the mother country and ultimate annexation to the United States. The indiscreet language of Mackenzie and some other Radicals had been such as to lend colour to misrepresentations of this nature, and the spirit thereby aroused was decisive of the

* It was afterwards urged by Sir Francis that his replies to addresses were made before, and not during, the election. The plea will not bear a moment's examination. The mischief was done by the inflammatory and menacing tone of the replies, and the mere question of the time of their delivery is of no importance whatever. An English writer thus effectually disposes of this attempted defence: "Surely he [Sir F. B. Head] must have some glimmering perception that this is not a question of time, and that, if promises or threats are addressed to the electoral body with regard to their exercise of the electoral franchise, it is a matter of no importance whether this is done before or at the time of the election. Illogical as he has proved himself, we cannot suppose him to be so utterly destitute of the reasoning faculty as a sincerity in this defence would imply; and we must therefore believe that he knows the charge to be well founded, and has recourse to this shuffling evasion in pure despair."—See *London and Westminster Review*, vol. xxxii., No. 2, article vi.

result. Not only professed Tories, but most of the moderate-minded of the population, rallied to the side of the Lieutenant-Governor, to uphold British connection, and to oppose the encroachment of republican and revolutionary ideas. Loyalty was rampant, and patriotic fervour was aroused to a height which it had not reached in Upper Canada since the War of 1812. "Down with democracy!" "Down with republicanism!" "Hurrah for Sir Francis Head and British connection!" Such were the legends inscribed on the dead-walls in the principal towns of the Province.* Tory votes were manufactured by wholesale, and Tory funds were squandered with reckless profusion. For the first time in the history of Upper Canada, Government agents were sent down to the polling-places armed with patents for land, to be distributed among the electors. It is open to doubt whether some of these were not conferred upon persons who had no title to them.† Reform votes were rejected by partisan returning-officers upon the most frivolous pretexts. Gangs of ruffians were stationed at the polls to intimidate those who ventured near to record their votes in favour of anti-Government candidates. In at least one instance, the Lieutenant-Governor presented himself in person at the polling-place while the contest was at its height, and remained there for some time on horseback, in close proximity to the spot where votes were recorded.‡ As for the Reformers, they were soon aroused from their dreams of confidence. But their rude awakening, early as it was, came all too late. They perceived that the seed had been well sown, and that the crop would have to be reaped. They found themselves looked upon with suspicion and dislike among their neighbours and others from whom they had been accustomed to receive confidence

* During the contest people on the hustings actually demanded of the candidates: "Do you vote for the House of Assembly or for Sir Francis Head?"—a question which, as Sir Francis himself remarks, amounted in plain terms to this: "Are you for a republican government, or are you not?"—See *Memorandum on the Present Political State of the Canadas*, in *Narrative*, chap. vi.

† Lord Durham, reasoning from such evidence as he had before him, proceeds upon the assumption that no patents were issued except to persons entitled to the land. But, as his Lordship admits, the granting of patents at all under such circumstances was an act of official favouritism which no Lieutenant-Governor with a proper sense of his duty would have permitted. See *Report*, U.C. folio edition, p. 51.

‡ This was at Streetsville, while the contest for the Second Riding of York was in progress between William Lyon Mackenzie and Edward William Thomson.

and respect. They needed all the courage of their opinions to support them against the obloquy which official slander had aroused. The courageous among them faced the polls in the spirit of a forlorn hope. The more timid quietly remained at home and refrained from voting, rather than subject themselves to certain insult and probable physical violence.

It may perhaps be urged, in reply to some of the foregoing allegations, that a Committee of the Assembly subsequently inquired into the various matters complained of, and that their report acquitted the Governor of all culpability. But anyone who is familiar with the proceedings of election committees in those days, and even in times much more recent, will not need to be informed how much—or how little—weight should be attached to a verdict from such a source. In the case under consideration, the proceedings were conducted with exceptional disregard to propriety, and the verdict of acquittal cannot be considered as of any value whatever. Only one member of the Committee heard the whole of the evidence upon which the report was based. Three of the members declared that the report was adopted without their knowledge or consent. Of the other five members who prepared the document, one attended only two meetings out of fourteen; while another attended four, and another five. A fourth member attended twelve meetings, and one only of the five attended all the fourteen. The inquiry was from first to last conducted in a spirit of partisanship, and the report, in the language of Dr. Rolph, was "the offspring of untempered zeal, insufficient evidence, hasty conclusions, and executive devotion."* As a general rule, it is a difficult matter to convict a Government of actual, direct interference with the freedom of election. But in the case of the general election of 1836, there is unfortunately no room for doubt. That patents were issued in great numbers by the Commissioner of Crown Lands, and despatched by the hands of trusted agents of the Government to the polling-places, to be used by the voters, is as well established as is the fact of the election itself. Nay, the fact is admitted by Sir Francis Head in the supplemental chapter to his "Narrative," as well as by the Committee appointed by the Assembly to investigate the matter, and the attempts to explain it away are of the weakest kind.

* See his speech in the Assembly on January 30th, 1837.

The number of patents issued was so great as to require a special staff of extra clerks to get them ready by the time they were wanted. In some cases the patents covered only a quarter of an acre of wild, uncultivated land, upon which no buildings had been erected. Many of them were issued between the date of the dissolution of Parliament and the close of the election a month later,* and in some instances they were issued after the actual opening of the poll. They were distributed openly at the places where the elections were held, to persons who had not applied for them, and who, at least in some instances, received them without paying the usual fees, merely that they might thereby be enabled to vote. Whether the issue of the patents affected the result of the election in any single instance is altogether beside the question. It would be absurd to pretend, in the face of such tactics as these, that there was any real freedom of choice offered to the people in the matter of Parliamentary representation. Freedom of election was paralyzed. Reform voters were literally overwhelmed, and their franchise rendered

* From official returns it appears that 1,478 patents passed the Great Seal between the 20th of April (the date of the prorogation) and the close of the contest in June. Of this number 1,245 were issued in pursuance of Orders in Council made prior to Sir Francis Head's arrival in the Province. Between his arrival and the close of the election 233 were issued, whereof only 150 were issued under Order in Council on his authority. But that the entire 1,478 were passed under Sir Francis's régime within a very brief period ; that a special staff of clerks was employed for the purpose ; that for the first time in the history of the Province these patents were distributed at the polling-booths by Government agents who were strong adherents of the official party, and who were moreover dependent upon the Government for their situations—these are circumstances which admit of but one brief explanation. The only one of these agents whom the Committee of Inquiry ventured to summon before them was Mr. Welsley Richey, of Barrie, who, on his examination, deposed that he mentioned to the Lieutenant-Governor that the persons who wanted their deeds were entitled to them, and that *he thought they would vote for Constitutional candidates ;* that Sir F. B. Head strictly commanded witness not in any manner to interfere as Government agent, or to use any influence which his situation gave him at the election ; that out of a number not exceeding 130 patents which persons residing in the County of Simcoe were entitled to, and which were in witness's possession for them, only about thirty were called for, and only part of that thirty voted. This is mere petty evasion. As pointed out in the text, the extent to which such tactics as these affected the result is not the chief question to be decided. The mere fact that they were employed is sufficient to settle the question of culpability. Richey was directed not to interfere with the elections *as Government agent.* How was it possible for an official known to be connected with the Government to divest himself of the influence inseparable from such a connection, more especially when his strong political bias was well known, and when he presented himself at the poll as a distributor of deeds among the voters? The mere fact of a conference on such a subject between the head of the Government and a subordinate is in itself a suspicious circumstance.

of no avail. All this was done with the cognizance and assent of the Lieutenant-Governor, who thereby wilfully violated the instructions which he had received from the Home Office.*

The result of an election contest conducted on these lines was such as to fully realize the expectations of Sir Francis and his advisers. Not only were all the old Tory members returned—and this, in several cases, without any opposition—but a number of new adherents of that side found seats. Hagerman was returned for Kingston by acclamation, McLean was returned for Stormont, George S. Jarvis for the Town of Cornwall, Jonas Jones and Ogle R. Gowan for Leeds, A. N. MacNab for Wentworth, W. B. Robinson for Simcoe, Mahlon Burwell for the Town of London, Henry Sherwood for Brockville, and William Henry Draper for Toronto. The last-named gentleman, known to later times as Chief Justice Draper, now entered public life for the first time. He was a very decided acquisition to the ranks of Upper Canadian Toryism, and was destined to exert a wide and far-reaching influence upon successive representatives of the Crown in this colony. But the triumphs of the official party were not confined to mere numerical successes. They wrested some important constituencies from the hands of their opponents. The Reformers were not only left in an insignificant minority, but nearly all their ablest members were defeated in what had long been regarded as safe Reform constituencies. Bidwell and Perry suffered defeat in Lennox and Addington; Lount underwent a similar fate in Simcoe; and Mackenzie was signally worsted in the Second Riding of York by a man of no political standing. Gibson, Morrison and Mackintosh gained their respective elections in the other three Ridings of York, but none of them possessed much Parliamentary ability, or was to be depended upon in any great emergency. The one significant gain to the Reform party arose out of the election of Dr. Rolph. The Doctor, after having allowed himself to be talked into accepting a seat in the Executive Council whose

* In Lord Goderich's despatch to Sir John Colborne, dated 8th November, 1832, referred to *ante*, p. 246, the following language is employed: "His Majesty expects and requires of you neither to practise, nor to allow on the part of those who are officially subordinate to you, any interference with the rights of his subjects to the free and unbiassed choice of their representatives;" and, as previously mentioned, Lord Glenelg had expressly instructed Sir Francis Head to adopt that despatch as a rule for the guidance of his conduct. See *ante*, p. 301.

resignation had been the beginning of the contest between the Reformers and the Lieutenant-Governor, had not felt himself at liberty to reject the overtures of his friends. He had been put in nomination for the County of Norfolk, and his candidature had been successful. He was a host in himself, and his return was the one streak of bright light which appeared in the Reform horizon at the close of the campaign.

Perhaps the most unsatisfactory feature about the whole unsatisfactory business, from the Reform point of view, was that the ignominious discomfiture of the Reformers had been brought about by defections from their own ranks. Moderate-minded Reformers had come to think, with the Conservatives, that even Family Compact domination was preferable to the ascendency of such men as Mackenzie. The publication of the baneful domination letter, followed, as it had been, by Tory misrepresentation, had led thousands of persons to believe that the Radicals secretly favoured the separation of the colony from Great Britain. The Wesleyan Methodists, a numerous body, were doubly impelled to oppose Mackenzie and all who favoured his cause. The quarrel between Mackenzie and the Rev. Egerton Ryerson has already been referred to.* Mr. Ryerson was in those days one of the most prominent figures in Upper Canadian Methodism, and in conjunction with his brothers, exerted a predominant influence among the members of that body. At the time of the general election of 1836 he was absent from the Province on a mission to England, whither he had gone to obtain a charter for the Upper Canada Academy, and to solicit subscriptions for the establishment and maintenance of that institution, which subsequently developed into the University of Victoria College. But the reverend gentleman's arm was far-reaching, and stretched across the broad expanse of the Atlantic. In common with a large and respectable portion of the Upper Canadian population, he cherished a feeling of personal contempt for Mackenzie, whose character he thoroughly despised, and whose projects he regarded as prejudicial to the welfare of the colony. The publication of the baneful domination letter had convinced him that rebellion and separation were among the cherished schemes of the Radicals. To all such schemes he was prepared to oppose his firmest resistance, for his

* *Ante*, p. 272.

loyalty was of the perfervid order, and his dislike of Mackenzie probably imparted additional zeal to his opposition. As has been seen, Mackenzie, with the aid of Hume, Roebuck and other British statesmen, had succeeded in creating in the minds of the English public considerable sympathy for Canadian Reform. To counteract this influence Mr. Ryerson, under the signature of "A Canadian," contributed a series of letters to the London *Times*. They were vigorously written, and attracted much attention, not only in England but in Canada, where they were republished in the columns of the Tory newspapers, and where they were circulated in pamphlet form as a campaign document. Mr. Ryerson also wrote to leading members of the Methodist body in Canada, urging them to cast all their influence for Government candidates, and against the revolutionary policy of the Radicals. His appeals served their purpose, and the great bulk of the Wesleyan Methodists of Upper Canada, who had theretofore supported Reform members, went over to the side of the Government. In many constituencies—notably so in Lennox and Addington—they held the balance of power, and their secession from the Reform cause decided the fortunes of the candidates.* A few remained unaffected by Mr. Ryerson's lucubrations, and some even went so far as to denounce his conduct and reply to his arguments, but these were too few in number to affect the general result. Some of the successful candidates were compelled to pledge themselves in advance to the Methodists and other Nonconformists to take immediate steps for the settlement of the Clergy Reserves question, but the pledges were neglected or forgotten during the turbulent epoch which ensued.

* Sir Francis Hincks, who, as previously mentioned in the text, then resided in Toronto, and was identified with the Reform party, has, in his *Reminiscences*, recorded his views on this subject, and as they are founded upon personal experience and recollection they are worth quoting. "Bearing in mind," he writes, "that there are exceptions to all general rules, I think that I am not wrong in my belief that the members of the Church of England and the Presbyterians generally voted for the Tory candidates, while the Roman Catholics and the Baptists, Congregationalists, etc., voted as uniformly for the Reformers. The Wesleyan Methodists held the balance of power in a great many constituencies, and I believe that it has been generally acknowledged that the elections in 1836 were carried against the Reformers by their votes." Again: "I believe that I am correct in asserting that Sir Francis Head carried the elections in 1836 against the Reformers mainly through the influence of the Rev. Egerton Ryerson, who, though absent from Canada at the time, had, by his published impressions, induced those who confided in him to abandon the Reform cause."—*Reminiscences*, etc., pp. 17, 18.

It will thus be seen that, as is clearly pointed out in the Report of Lord Durham,* the contest which had been commenced on the question of a responsible Executive Council had afterwards been adroitly turned by the official party, and had been decided on very different grounds. The question of a responsible Executive, as well as the question of the Clergy Reserves, had for the time sunk out of public notice. All other matters had given way to a resolve to return candidates who would "rally round the throne." The triumph of the Government went far beyond what several members of it had ventured to anticipate. On the 8th of July, Sir Francis was able to report to Lord Glenelg that "the Constitutionists"—by which name he designated the official party and all who supported them—had a majority of twenty-five,† whereas in the preceding Assembly they had been in a minority of eleven. In the same despatch he availed himself of the opportunity to malign Mr. Bidwell, whom he characterized as the "twin or Siamese companion of Mr. Speaker Papineau." He descanted upon the powerful reaction which had been brought about, and exultingly informed his Lordship that of the four candidates who had contested the constituency of Lennox and Addington Mr. Bidwell had polled the fewest votes.

The Colonial Minister must have been sore puzzled to know what to make of this gushing and galloping Lieutenant-Governor, who was so evidently devoid of the peculiar qualifications supposed to be requisite for one in his station, and who framed his official despatches upon the model of a sensation novel. Here was a man who had been selected for an elevated and honourable post because he had been supposed to be an adept in the science of politics, but who, as it now turned out, was utterly unacquainted with the principles and practice of Government; who was ignorant of the proprieties and amenities of official intercourse; who, in what were intended for grave official despatches, indulged in extracts from French vaudevilles, and referred to certain methods of procedure as not being *according to Hoyle!* By all known theory and precedent,

* U.C. folio edition, p. 49.

† The House contained in all only sixty-two members, so that a majority of twenty-five constituted what might be called absolute control. The actual majority was twenty-six, as there were but eighteen Reform representatives as against forty-four supporters of the Government.

the accession to office of such a man ought to have been attended by immediate and ignominious failure. Yet, so far as could be judged, he had by no means failed. Nay, he actually appeared to have scored a marvellous success, and to have brought about what men of greater ability and wider experience had been utterly unable to accomplish. Such a success was an inscrutable mystery to the official mind, and Lord Glenelg, after the first few weeks, appears to have abandoned all attempts to penetrate it. The entire demeanour of this unconventional Lieutenant-Governor was incomprehensible. He had expressed his total dissent from the policy of the Commissioners of Inquiry in Lower Canada, who had reported in favour of a responsible Executive.* He had even gone so far as to tender his resignation in consequence of his inability to concur in the liberal measures of Reform advocated by the Commissioners.† But the Home Government had by no means been disposed to accept his resignation just at that time. They had no available person to put in his place, and it had been thought desirable that he should be permitted to try his hand a little longer. And now this news as to the result of the elections seemed to fully justify their determination to retain him in office. If he had really inaugurated a new and improved order of things in Upper Canada, it was only fair that he should enjoy the prestige of his success.

But the ill effects of Sir Francis's superficial and disastrous policy were already beginning to be apparent to those whose eyes were keen enough to look below the surface of things. The Reformers felt that they had been out-manœuvred. That they could have borne, for they had often been compelled to bear a similar infliction in past times. But they considered that they had been cheated out of their rights by one whose especial duty it was to watch over and preserve those rights inviolate. They had endured much at the hands of a Gore, a Maitland and a Colborne. But Gore, Maitland and Colborne had not presented themselves before them in the garb of tried Reformers. They had been the Tory emissaries of Tory superiors beyond sea, whose instructions they had generally carried out. All this had been changed; but the change, so

* See his despatch of 1st June. † *Ib.*

far as Upper Canada was concerned, had been for the worse. The Reformers of the Province felt that the man who had been placed at the helm of State—the man who had been sent over by an ostensibly Liberal Government to redress the accumulated wrongs of the past—was in some respects far more dangerous than any of his predecessors had been. Carlyle had not then delivered his celebrated discourse on fools, but the idea that a fool may sometimes be far more dread-inspiring than a wise man is sufficiently obvious, and had presented itself in vivid shape before the minds of a good many of the Reformers of Upper Canada. They had by this time come to know something of Sir Francis Head. They had brought themselves to regard him as not only a fool, but a fool devoid of right feeling or principle; a fool who would stop at no injustice or iniquity the perpetration whereof would conduce, in however small a degree, to his own glorification. He evidently regarded his personal interference in the elections as a thing upon which he ought to plume himself. Such a state of things was not to be borne. It was clear that life, for Canadian Reformers, would very soon be not worth living. They despaired of the future, which, to their depressed vision, seemed to be overhung by a sky of unrelieved blackness. Their despair was accompanied by a smarting sense of defeat and injustice proportionate to the circumstances. Such feelings were not confined to defeated candidates and their immediate friends, but were participated in by Reformers generally. Some of them began to weigh the advantages and disadvantages of removal from the Province. Others, after the first effervescence of disappointment had expended itself, determined to endure in patience and to hope for the best. A comparatively small number, yielding to the influence of mingled despair and exasperation, began to contemplate armed resistance to authority as among the possibilities of the near future. Constitutional resistance, they thought, had had a fair trial. Might it not be worth while to try a more drastic remedy?

Conspicuous among the personages who were strongly influenced by such thoughts as those last indicated was William Lyon Mackenzie, who, as previously mentioned, had lost his election in the Second Riding of York. It might have been supposed that if any constituency in the

Province was beyond the reach of Tory influence, the Second Riding was entitled to that distinction. It was notoriously the most Radical constituency in the colony. It had stood loyally by Mackenzie all through the troubled epoch of the successive expulsions. Yet it had now thrown him overboard on behalf of a political nobody. The explanation is to be found in the fact that the Riding had been the scene of some of the most scandalous abuses committed during the campaign. The Tories had resolved that Mackenzie should be defeated at any cost, and had resorted to the most reprehensible means to secure that end. To elect a professed Tory would have been an impossibility, so the person fixed upon to oppose him was one whom the author of "Middlemarch" might have had in her eye when she described Sir James Chettam as "a man of acquiescent temper, miscellaneous opinions and uncertain vote."* His name was Edward William Thomson, and he professed to be a moderate Reformer. His moderation was acceptable to a considerable proportion of the electors, many of whom were tired of Mackenzie. The official party, however, did not choose to rely upon legitimate means for defeating the Radical candidate. Money was spent freely, and brawny bullies were hired for purposes of intimidation. Good votes were rejected on one side, and bad ones accepted on the other. Patents were sent down to the polling place, certain recipients whereof voted for Thomson. Sheriff Jarvis attended, and by his language and demeanour did what he could to discourage Mackenzie's supporters. Not a stone was left unturned to effect the desired object. Such means as Mackenzie had at his command were altogether insufficient to counteract the devices employed against him. He was beaten, and by a majority of a hundred votes.

This result took Mackenzie completely by surprise. It came upon him in the form of a revelation. He had not permitted himself to entertain any doubt of his success, and the conviction that he had lost

* This language aptly characterizes Mr. Thomson, for afterwards, in the Assembly, it was impossible to predict how he would vote on any conceivable question. His "Reform" principles must have been very "moderate," for he frequently supported the measures of the Compact. His votes seem to have been dictated by chance or caprice, rather than political conviction of any kind.

his popularity cut him to his inmost soul. He retired to the house of one of his supporters in the neighbourhood, where he completely broke down, and wept with a bitterness which evoked the active sympathy of those present. But this mood did not last. It was succeeded by a sullenness and stolidity such as had never before been observed in him. He knew that he had been beaten unfairly, and resolved to petition against the election. Meanwhile his rage against the party which had been concerned in his defeat was ungovernable, and must have vent. He resolved that he must again have control of a newspaper. He accordingly established *The Constitution*, a weekly paper, the first number of which made its appearance in Toronto on the sixtieth anniversary of the Declaration of Independence of the United States—namely, the 4th of July, 1836. Its tone was such as might have been anticipated from the mood of its editor. It was more outspoken than the *Advocate* had ever been under his management, and might from the first have been styled a revolutionary organ. In its columns every phase of discontent found utterance, and some of its editorial articles were marked by a spirit of bitterness and implacability such as had not commonly been supposed to belong to Mackenzie's nature. Means would doubtless have been taken for its suppression, had not the Government felt that they had achieved a signal triumph, and that they could afford to ignore its attacks.

Many others of the Radicals felt little less rancour towards the Government party than did Mackenzie. Indeed, the conduct of the party in power had been such as to make temporary Radicals of not a few persons who had theretofore been known as moderate Reformers. It may be said indeed that nearly all the moderates had either made common cause with the Government party for fear of the Radicals, or had coalesced with the Radicals from a sense of official tyranny and injustice. Public meetings were held, at which the Lieutenant-Governor and his myrmidons were subjected to the most vehement denunciations. At a meeting of the Constitutional Reform Society Dr. Baldwin, George Ridout, James E. Small and others referred to his Excellency's conduct in terms which public audiences had never before heard from their lips. An official address issued by the Society on the subject of the resignation of

the Executive Councillors also contained some severe but well-merited strictures. The Lieutenant-Governor marked his condemnation of the language employed by promptly dismissing the three gentlemen above named from certain offices which they held.* As will hereafter be seen, this proceeding eventually led to serious complications between the Home Office and Sir Francis. Meantime, the latter was permitted to have his own way, but not without stubborn attempts at resistance on the part of some of his opponents. A number of the most pronounced Radicals resolved to make a strong representation of election and other abuses to the British House of Commons, and to that end sent Dr. Charles Duncombe to England. Dr. Duncombe had been re-elected for Oxford, but had had to contend against similar influences to those which had been employed in other constituencies, and was thus able to speak of the partisan conduct of the Lieutenant-Governor's emissaries from personal observation. He prepared a statement of the case against Sir Francis, which was laid before the House of Commons by Mr. Hume. The Colonial Secretary despatched a copy of it to Sir Francis for explanations. It is unlikely that Dr. Duncombe's mission would have been a successful one under any circumstances, but he made the mistake of protesting too much. The greater part of the indictment could easily have been substantiated before any impartial tribunal, but it also contained charges which, whether true or not, the prosecutor was unable to prove. As mentioned on a former page,† the matter was referred to a Committee of the Provincial Assembly, by whom the Lieutenant-Governor was completely exonerated. A further reference to the matter will be made in connection with the proceedings of the following session.

The Lieutenant-Governor was meanwhile engaged in a voluminous correspondence with the Colonial Secretary. The subjects dealt with therein were many and various. Perhaps the most important of all was

* Dr. Baldwin was Judge of the Surrogate Court of the Home District. His dismissal was probably due quite as much to the fact that he was President of the Society as to his remarks about the Lieutenant-Governor, or to the official address. Mr. Ridout was Judge of the Niagara District Court, Justice of the Peace, and Colonel of the Second Regiment of East York Militia. He was dismissed from all three offices, although he was not a member of the Reform Society. Mr. Small was Commissioner of the Court of Requests in Toronto, and also Lieutenant-Colonel of the First East York Militia.

† *Ante*, p. 330.

the Lower Canadian Commission of Inquiry. The Commissioners had made a report in which they had recommended the concession of Responsible Government, and other much-needed Reforms. As previously mentioned, Sir Francis had no sympathy with these views, and distinctly repudiated the policy thus recommended. The idea of a responsible Executive was utterly repugnant to him. He erelong perceived that the Imperial Government would sooner or later yield to the imperative demand made on behalf of the different British North American colonies, but he determined to fight against it as long as opposition was possible, and his despatches teem with what he doubtless regarded as arguments on the negative side. He predicted the most serious results if the policy of the Commissioners was adopted. The language of the Ninety-two resolutions of the Lower Canada Assembly he pronounced to be not only insulting to the British Government, but traitorous. He proposed various measures for establishing the power of the Crown in the Canadas on a firm basis. Among these were the repeal of the Act surrendering the revenue, the annexation of the District of Gaspé to the Province of New Brunswick, and the annexation of Montreal to Upper Canada. It may safely be assumed that these ideas were not his own, and nobody who has read "Canada and the Canada Bill,"* published several years later, will entertain much doubt as to the individual from whom he derived his inspiration.

* Written by Chief Justice Robinson, in opposition to the project for uniting the two Provinces of Upper and Lower Canada.

CHAPTER XVII.

REACTION.

THE closing weeks of the summer and a part of the early autumn were spent by the Lieutenant-Governor in an informal tour through some of the most interesting and picturesque districts of the Province. A great part of the tour, which occupied in all about two months, was performed on horseback, and with only two attendants. A pleasantly-written account of some of the experiences encountered during this invigorating holiday may be found in "The Emigrant," a light, sketchy, and most readable little volume put forth by Sir Francis ten years afterwards. Soon after his return to the Seat of Government his self-complacency received a check in the form of a despatch from the Colonial Office, enclosing copies of instructions which had been sent to Sir Archibald Campbell, Lieutenant-Governor of New Brunswick. It appeared that the strenuous exertions of the Reformers of that Province had been crowned with success. Sir Archibald had been directed to surrender to the Assembly the casual and territorial revenues of the Crown, and to concede a responsible Executive. This was not all. Sir Francis was himself distinctly informed that what had been conceded in one British North American Province could not be withheld from the rest. Scarcely had this piece of intelligence been chewed and digested ere he received another despatch which added to his discomfiture by confirming the previous one, and by seating the obnoxious doctrine at his very door. He was instructed that the Executive Councils in the various North American colonies were thenceforward to be composed of individuals possessing the confidence of the people. This, though not altogether unexpected, was almost past bearing. He saw the house of cards which he had constructed with such pains about to crumble before him. If

this course were persisted in, all his efforts to pack a House of Assembly would erelong prove to have been made in vain; for no Assembly would permanently uphold a clique of Councillors in whose appointment they themselves had had no voice, and in whose principles they had no confidence. Sir Archibald Campbell and he were entirely of one mind as to the vexed question at issue, and they were both firmly determined to resist such a policy to the last ditch. Of Sir Archibald's proceedings it is unnecessary for this work to present any detailed account. It will be sufficient to say that he preferred to resign his office rather than obey the instructions he had received, and that he carried out this resolve during the following year, when he was succeeded by Sir John Harvey. Sir Francis Head meanwhile contented himself as best he could with vehement protests addressed to the Home Office. "The more seriously I contemplate the political tranquillity of this Province," he wrote,* "the more stedfastly am I confirmed in my opinion that cool, stern, decisive, unconciliating measures form the most popular description of government that can be exercised towards the free and high-minded inhabitants of the Canadas." The style of his despatches did not improve with time. It was wordy, bombastic and slangy. The despatches themselves were largely made up of inflated, impertinent phraseology, and quotations from the light literature of the period. Lord Glenelg, however, had become accustomed to the unconventional methods of his protégé, and was by no means disposed to judge him with severity. On the 8th of September he wrote to him to the effect that his "foresight, energy and moral courage" had been approved of by the King. "It is peculiarly gratifying to me," wrote his Lordship, "to be the channel of conveying to you this high and honourable testimony of His Majesty's favourable acceptance of your services." From all which it is sufficiently apparent that the real state of Upper Canadian affairs was not much more clearly understood by the Colonial Office than by Sir Francis Head.

The new Parliament was assembled on the 8th of November. Archibald McLean, of Stormont, was elected Speaker by a majority of fifteen, the vote standing thirty-six to twenty-one. This vote did not by

* See despatch of 30th December, 1836, in *Narrative*, chap. vii.

any means indicate the full strength of the Government, which was simply irresistible. The power of the Compact was not only completely restored, but increased. Never had its ascendency been so great. It was absolute, overwhelming; and any opposition to it was a bootless kicking against the pricks. In the Speech from the Throne his Excellency congratulated the Houses on the loyal feeling pervading the Province, and on the stillness and serenity of the public mind. He drew attention to "the conspicuous tranquillity of the country," and briefly referred to the legislation contemplated by the Government, which, as thus indicated, was of an exceedingly practical character. The Speech concluded with a declaration of his Excellency's intention "to maintain the happy constitution of this Province inviolate." If the Speech, as a whole, contained a faithful reflex of the official mind, it indicated that the Government greatly misjudged the state of opinion in the country. True, there was little conspicuous agitation, for the Reform party had sustained so signal a defeat that they for the time felt powerless. But they were feverishly sensible of the crushing blow that had been dealt them, and reeled from it in a spirit which was far removed from "serenity." Scores of them despaired of the future, sold out their belongings, and removed to the United States. During the months of September and October there had been a considerable emigration of farmers from the western part of the Province to Michigan. Such was the "tranquillity" upon which Sir Francis plumed himself, and upon which he continued to dilate at recurring intervals until he was roused from his slumbers by the intelligence that "the rebels" were at Montgomery's.

The Legislature at once proceeded to pass a Bill to provide for the support of the Civil Government for the current year, a circumstance of which the Lieutenant-Governor hastened to apprise Lord Glenelg. Various matters of importance occupied the attention of Parliament during the session. Among other questions which came up for discussion was the long-standing grievance of the Clergy Reserves. On Thursday, the 8th of December, a Bill was introduced into the Assembly by Hiram Norton, member for Grenville, having for its object the disposal of the Reserves for purposes of general education. It passed

the second reading on the 13th of the same month, whereupon the House, in Committee of the Whole, after several days consideration and discussion, reported a resolution in favour of appropriating the Clergy Reserves lands and the proceeds arising from the sales thereof to the religious and moral instruction of the people. This gave rise to a motion of amendment by Dr. Rolph, "That it is expedient to provide for the sale of the Clergy Reserves, and the application of the proceeds to the purposes of general education, as one of the most legitimate ways of giving free scope to the progress of religious truth in the community." In support of this amendment the Doctor made what was unquestionably the most noteworthy speech of his life—a speech which a well-known writer* has pronounced to be without a parallel in the annals of Canadian Parliamentary debate. Its copiousness and felicity of illustration, its fluent and harmonious elegance of diction, could not have failed to stamp it as a great effort if it had been delivered before any audience in the world. No higher praise can be awarded to it than to record the simple fact that it added to the Doctor's already high reputation as an orator, and that it evoked the admiration of many persons who could not subscribe to the doctrines and arguments it contained. But no oratory and no arguments would have availed with that House. The amendment was lost, and on Friday, the 16th, the original resolution

* Mr. Charles Lindsey, in his pamphlet on "*The Clergy Reserves: their History and Present Position;*" appendix, p. i. He adds: "The clear, pointed, classical diction of the speaker; the learning and historical research he displayed; the beauty and appositeness of his illustrations; the breadth and depth and immovable basis of his arguments; the clearness, the syllogistic accuracy and force of his logic, and the impressive eloquence of his delivery produced an effect upon those who heard the speech never to be forgotten. Its publication in the newspapers of the day aroused the people. It convinced them (for, strange as it may seem now, there were many who needed to be convinced) of the unscriptural, immoral and unjust character of a State religion; while it confirmed them in their determination to rest not until they had exterminated the curse from Canadian soil. . . This noble effort of an able, learned, bold and patriotic defender of the cause of the people against their corrupt, unscrupulous and then powerful enemies, ought to be printed in letters of gold, and preserved for the instruction and warning of all future generations of Canadian freemen." This was written in 1851, when the Clergy Reserves question yet remained unsettled, and while it still continued to agitate the public mind almost to the exclusion of other matters. Now that the subject has ceased to be a practical one, the encomiums so lavishly bestowed upon Dr. Rolph's famous speech will perhaps seem a little overstrained; but it was most unquestionably a great oratorical and intellectual effort, such as had never before been heard within the walls of the Provincial Legislature. Even at this distance of time, when all interest in the subject has died out, the speech cannot be read without arousing a feeling of admiration for the orator.

was carried by a vote of thirty-five to twenty-one. The matter was then referred to the Upper House for its concurrence. As the measure fell through during the session, and ultimately came to nothing, it seems unnecessary to follow its fortunes any farther.

Dr. Rolph made another powerful speech during the session; a speech which would of itself have entitled him to a high place as a Parliamentary orator, and which was inferior in vigour only to the one on the Clergy Reserves. It arose out of Dr. Duncombe's charges against the Lieutenant-Governor. Having received from the Colonial Secretary a copy of the complaint which had been submitted to the House of Commons, his Excellency, who was of course able to rely implicitly upon the Assembly as then constituted, handed it over to that body to be dealt with. The result fully justified his confidence. A partisan Committee was appointed, by whom the question was approached in a spirit very far removed from judicial fairness. How the inquiry was conducted has already been recorded.* Dr. Duncombe had made certain charges, some of which were easily susceptible of positive proof, while others were from their nature of a kind which admitted of nothing stronger than indirect evidence. With regard to one or two damnatory charges, he implicitly believed them to be true, but he failed to secure any substantial proof whatever. He presented himself once before the Committee, only to find, as he had expected, that he must not look to obtain a fair or patient hearing. Under these circumstances he felt that nothing was to be gained by any further attempt to establish the truth of his allegations, and permitted the case to go by default. The Committee accordingly proceeded to take evidence on their own responsibility. The verdict arrived at was such as might easily have been foreseen. Every charge and insinuation made against his Excellency was declared to be "wholly and utterly destitute of truth." Not only was his conduct vindicated in this comprehensive manner, but he was referred to as one to whom the Province owed a large debt of gratitude. In due course the report came before the Assembly on a motion for its adoption. The proceeding had from the first been of the nature of a practical impeachment of the Lieutenant-Governor, a matter which was really beyond the jurisdiction

* *Ante*, p. 330.

of any Canadian tribunal. It afforded to Dr. Rolph an opportunity for addressing the House at considerable length, and in a speech which, as remarked by Mr. Mackenzie's biographer, "will ever be memorable in Canadian history."* It was delivered on the 30th of January, 1837. It dealt in most trenchant fashion with the various abuses which had been practised during the elections. The serio-comic tone which pervaded a great part of it evoked roars of laughter, while its more earnest passages aroused the most conflicting feelings in the minds of the auditors. True oratory is never altogether fruitless, and it would seem as if this powerful speech must have given the spur to feelings which, sooner or later, were bound to produce specific results. So far, however, as any immediate effects upon the action of the House were concerned, it might as well have remained unuttered. The report was adopted by a vote of more than two-thirds of the members present, and the Lieutenant-Governor stood officially exonerated from blame. 1837.

Among other matters presented for the consideration of the Assembly was a petition from Mr. Mackenzie. Ever since the election, he had publicly announced his determination to petition against the return in the Second Riding of York. He was prevented by illness from filing his memorial within the prescribed period, and an extension of time was obtained on his behalf. He got together a great mass of evidence, some portions of which the Government would certainly have found it hard to answer to the public satisfaction. He was jubilant, and openly boasted that he would expose such a mass of corruption as would make the country stare aghast. He was however so intent on collecting evidence and on discounting his contemplated triumph over his enemies that he failed to enter into the necessary recognizance until the allotted period for doing so had elapsed. The statute governing the case required that the petitioner should enter into recognizance within fourteen days from the presentation of the petition. In this case the petition was presented on the 20th of December, 1836, so that the fourteen days expired on the 3rd of January, 1837. "If at the expiration of the said fourteen days"—so ran the statute—"such recognizance shall not have been entered into, the Speaker shall report the same to the House, and the order for

* Lindsey's *Life of Mackenzie*, vol. i., p. 392.

taking such petition into consideration shall thereupon be discharged; unless, upon matter specially stated and verified to the satisfaction of the House, the House shall see cause to enlarge the time for entering into such recognizance." Accordingly, on the opening of the House on Wednesday, the 4th of January, Mr. Speaker McLean announced that the time limited for W. L. Mackenzie, the petitioning candidate for the representation of the Second Riding of York, to proceed upon his petition, had expired. Mr. Boulton, one of the members for Durham, then moved that the further consideration of the petition be discharged. Dr. Morrison sought to obtain additional time for the furnishing of the statutory recognizance, but the House was under no obligation to grant any indulgence, and after a long debate declined to do so. Mr. Boulton's motion was carried; whereupon Dr. Morrison moved that Mr. Mackenzie have leave to present a new petition. The House negatived this motion, and Mr. Thomson was confirmed in his seat. The matter was again brought before the notice of the House a few days afterwards by Dr. Morrison, who moved that Mr. Mackenzie be allowed further time to enter into the requisite security. The motion was made in order to give Dr. Rolph—who had not been present during the former discussion—an opportunity of speaking on the subject. The member for Norfolk delivered himself of a vigorous and subtle argument, in the course of which he reviewed the English practice, as well as the practice which had generally prevailed in similar cases in Upper Canada. The fourteen days, he argued, should be computed from the time when the petition was read to the House, not from the date when it was handed in. The presentation referred to in the statute, he alleged, was not complete until the reading of the petition, which could not take place until it had lain on the table two days. Still further, the petitioner's delay had been in part due to the Clerk of the House, who had led Mr. Mackenzie to believe that the fourteen days would not begin to run against him until two days after the delivery of the petition. The argument throughout was plausible and powerful, but it shared the fate of many other powerful appeals in those days. The motion was lost. There seems to have been a strong determination on the part of the Government to burke the investigation. This was suggestive of a fear of the result, and

was so regarded by many wholly disinterested persons. Some of the charges were of the gravest nature, and, if the Government had felt that their skirts were clean, it is incomprehensible that they should not have availed themselves of such an opportunity of establishing the fact by official record. There seems but too good reason to believe that, if the inquiry had been proceeded with, Mackenzie would have made good his boast, and that a disgraceful exposure of Executive corruption would have been made.

One of the significant measures of the session was an Act to prevent the dissolution of the Provincial Parliament upon the demise of the Crown. The desire of the Executive for such an enactment arose in this manner. During the brief election campaign of the preceding summer the most tempting promises had been made to the electors on behalf of the Government. This had been done with the full knowledge and consent—nay, probably at the instigation—of the members of the Government themselves. The fulfilment of some of the promises would have been feasible enough. Others had been as absurdly impossible of fulfilment as were Jack Cade's pledges that seven halfpenny loaves should be sold for a penny, and that the three-hooped pot should have ten hoops. The Government now realized that their performances were far from being commensurate with the promises so lavishly made. In the event of a new election taking place within the next few months it would be easy for the Reformers to make out a strong case, and it would be hard for the Government party to reply thereto with effect. It seemed not improbable that a new election might erelong become necessary, for King William the Fourth was more than three score and ten years old, and was known to be in a state of health which rendered it unlikely that he would live much longer. Now, his death, in the ordinary course of things, would bring about a dissolution and a general election, and this was the contingency against which it was thought desirable to guard. A measure was accordingly passed whereby it was enacted "That the Parliament of this Province shall not in any case be deemed to be determined or dissolved by the death or demise of His Majesty, his heirs or successors; nor shall any session of the Parliament of this Province be deemed to be determined, or the proceedings therein pending in any

manner abated, interrupted or affected by the demise of His Majesty, his heirs or successors; but notwithstanding such death or demise the Parliament of this Province shall continue, and, if sitting, shall proceed to act until dissolved or prorogued in the usual manner, or until the legal expiration of the term of such Parliament." The Reformers fought this Bill inch by inch on its way through the Assembly, but in vain. Upon its coming up for its third reading, Norton, of Grenville, moved its recommittal, and, upon the defeat of his motion, he made a final effort by moving "That the Act shall not go into operation before the expiration of the present Parliament." This, too, was defeated, and the Bill was finally passed by a vote of twenty-six to eighteen. The measure is suggestive of the English Act passed by the Long Parliament during the reign of Charles the First, which enacted that Parliament should not be dissolved by the King without its own consent.

There was a good deal of extravagant legislation during the session. Large sums were voted for the construction and improvement of Provincial highways, for surveys of the Ottawa River and the territory contiguous thereto, for the improvement of the navigation of the Trent and Grand Rivers, for the completion of the Welland Canal, and for the construction of various other canals, harbours, and lighthouses. Provision was also made for loans to several railway and other companies. Most, perhaps of all these, were enterprises deserving of aid and encouragement, but the aggregate sum of the moneys voted was nearly four millions of dollars, being considerably more than the condition of the Province and the circumstances of the people justified. This exceeding liberality was probably to some extent due to a wish to respond to the popular demand for the expenditure of money on public improvements. It was during this session that an Act was passed providing for the establishment of a Provincial Court of Chancery. Mr. Jameson was soon after appointed Vice Chancellor, the Chancellorship being vested in the Crown.

The session terminated on Saturday, the 4th of March, and its termination was attended by a scene of "most admired disorder" in the Assembly. The project of uniting the Provinces of Upper and Lower Canada had occupied a certain amount of attention on the part of both Houses, and had been on the order of the day throughout the greater part of the

session. When the final day of deliberation arrived, the Legislative Council sent down to the Lower House an Address embodying certain resolutions against the proposed union. The Address was accompanied by a request that the Assembly would concur therein, after which it was to be despatched to the King. It reached the hands of the Clerk of the Lower House about noon, and was at once submitted in the form of a motion of concurrence. This was not relished by the Reformers, who were strongly disposed in favour of an equitable union of the two Provinces, a step which, as they believed, would go far to adjust the balance of parties. A considerable number of the members had already left for their homes, and Dr. Rolph took advantage of this circumstance as a plea for postponing the further consideration of the matter until the next session. He moved an amendment to that effect, and said a few words in support of his motion. Dr. Morrison and Thomas Parke* took up the argument, and spoke for some minutes. They were subjected to frequent interruptions from the supporters of the Government, who were evidently anxious to prevent discussion. Dr. Rolph then rose to speak to the question of order, upon which the interruptions were renewed. Frequent appeals were made to the Speaker, who soon found himself involved in an animated discussion with Dr. Rolph. Nearly all the prominent members of the House erelong became participants, and the situation became critical. Hard words were freely bandied about, amid the greatest confusion and disorder. An eye-witness compares the scene to a wasp's nest disturbed.† The Speaker finally put a stop to the ebullitions of temper, and brought the scene to a close by announcing that the time had arrived for waiting on the Lieutenant-Governor with certain addresses. There was no opportunity of renewing the discussion, and at half-past three o'clock Black Rod summoned the House to the bar of the Legislative Council. In proroguing Parliament the Lieutenant-Governor referred in complacent terms to the legislation of the session, and applauded the harmony which had prevailed between the two branches of the Legislature.

* Member for Middlesex.

† See the report in the number of *The Correspondent and Advocate* for Wednesday, March 15th.

By this time it began to be apparent to discerning persons that Sir Francis's success as an Administrator had been rather apparent than real. All through the election campaign, as well as for some time before and after, the Tory party had sounded his praises with stentorian lungs. He had to a large extent been accepted by the country at their valuation. But sufficient time had now elapsed to enable the people to judge for themselves, and it was shrewdly suspected that the current estimate of him had been too high. He had triumphed at the elections, and had managed to pack the Assembly with an overwhelming majority of members pledged to support his policy; but he now began to discover that he had raised a spirit which he could not control. Neither the majority in the Assembly nor the members of the Legislative Council were prepared to slavishly accept his dictation, or to follow him blindfold whithersoever he might choose to lead them. Some of the official utterances of these bodies during the session had been as strongly assertive of their own dignity and independence as the deliverances of the former Assembly had ever been. Even the Executive Council had begun to exhibit an impatience of being indirectly dictated to by unsworn advisers who were permitted by the Lieutenant-Governor to usurp the functions peculiarly belonging to themselves. His Excellency's popularity was evidently waning throughout the land. There was a decided reaction against him, and thousands of Reformers who had voted for Government candidates at the election were now animated by a strong sentiment of opposition. The Lieutenant-Governor was also at issue with the Colonial Office on several matters of importance. To the recommendations of the Lower Canada Commissioners, as previously mentioned, he had strenuously opposed himself. He had failed to carry out the direction of Lord Glenelg to restore Mr. Ridout to the offices from which that gentleman had been dismissed. He now displayed further insubordination by neglecting to obey several minor injunctions received from headquarters, by which course of procedure he involved himself in much disputatious correspondence. His anxieties were increased by a commercial crisis which set in about this time in the United States. There had been an era of seeming prosperity but real inflation in that favoured land, of which the present crisis was the

legitimate consequence. Specie payments were suspended, and business was all but paralyzed. This disheartening state of things was speedily reflected in Canada, which was ill qualified to bear such an infliction. The banks and the mercantile community generally became alarmed. In the Lower Province the banks suspended specie payments, and our own were much disposed to follow the example. The directors of some of our leading financial institutions applied to the Lieutenant-Governor for advice and direction. As all these matters, however, belong rather to the mercantile history of the country than to the story of the Rebellion, there is no need to go into them with minuteness. Suffice it to say that Sir Francis Head deemed it proper in this emergency to convene an extra session of the Legislature, which met accordingly on Monday, the 19th of June. As Mr. McLean had accepted a seat on the bench since the close of the preceding session, it was necessary that a new Speaker should be elected, and A. N. McNab was chosen as his successor.* The session lasted only three weeks, and terminated on Tuesday, the 11th of July. It was purely a session of emergency, and the legislation was confined to relieving the banks from certain penalties which the crisis had threatened to impose upon them.

*Forty-two members were present at the vote on the Speakership, all of whom voted for Mr. McNab with the exception of David Gibson, of the First Riding of York, who recorded his solitary vote in the negative.

Chapter XVIII.

THE FORGING OF THE PIKES.

IT will be remembered that, during the summer of 1836, Dr. Baldwin, George Ridout and J. E. Small had been dismissed by Sir Francis Head from certain offices held by them at the pleasure of the Crown. Mr. Ridout had appealed to Lord Glenelg, to whom the Lieutenant-Governor had soon afterwards found himself called upon to defend his conduct. The only reason which had at first been assigned by his Excellency for Mr. Ridout's dismissal was that the latter was presumed to be a member of the Constitutional Reform Society. This society, just before the election, had issued and circulated a printed address wherein his Excellency was charged with a disregard of constitutional Government, and of candour and truth in his statements. Mr. Ridout had undoubtedly attended and spoken at some of the meetings of the society, but he was not a member of it, and had no difficulty in establishing the fact to the satisfaction of the Colonial Secretary, who, after mature consideration, conveyed to Sir Francis His Majesty's commands that Mr. Ridout should be reinstated in the various offices from which he had been removed. With this command, as mentioned towards the close of the last chapter, Sir Francis did not see fit to comply. Finding himself beaten upon the case as it stood, he proceeded to amend the record by alleging other matters against the accused. In this course he met with little encouragement from his Lordship, who patiently combated his untenable positions, and repeated the injunction that Mr. Ridout should be reinstated. While the matter was in abeyance, another difference of opinion arose between Lord Glenelg and Sir Francis. During the spring of 1837, Mr. Jameson having been appointed Vice Chancellor, and Archibald McLean and Jonas Jonas having been appointed Judges of

the Court of King's Bench, it became necessary for Sir Francis to submit these appointments to his Lordship, together with those of Mr. Hagerman and Mr. Draper respectively to the offices of Attorney-General and Solicitor-General. His Excellency seems to have felt that it was necessary to assign some reason for passing over Mr. Bidwell, whose legal acquirements were certainly superior to those of any other member of the Upper Canada bar since John Rolph had abandoned the long robe. "That gentleman's legal acquirements," wrote Sir Francis, * "are, I consider, superior to at least one of the individuals whom I have elevated. His moral character is irreproachable. But, anxious as I am to give to talent its due, yet I cannot but feel that the welfare and honour of this Province depend on His Majesty never promoting a disloyal man." His Excellency then went on to represent Mr. Bidwell as having been desirous of effecting the separation of the colony from the parent state, and of exchanging the British constitution for "the low, grovelling principles of democracy." There was no allegation that any such desire had ever been personally expressed or manifested by Mr. Bidwell, but it was inferred *from the conduct of his associates*. This was somewhat more than the Colonial Secretary could quietly pass over. He pointed out † to the Lieutenant-Governor that the disloyalty imputed to Mr. Bidwell's associates had not been charged against himself, or attempted to be proved by any act of his; that he had withdrawn himself from political strife; and that as his professional abilities and high moral character were respected by his political opponents, the political stand formerly taken by him ought not to operate against his advancement. It was further urged by his Lordship that the elevation of such a man to the bench would convince the Upper Canadian public of the impartiality of the Executive in such matters. Finally, his Excellency was informed that should another vacancy occur among the Judges of the Court of King's Bench, it was the wish of His Majesty's Government that the situation should be offered to Mr. Bidwell.

Upon receipt of the missive containing this intimation the Tried Reformer was almost beside himself. He had none of that magnanimity

* See his Despatch to Lord Glenelg, dated 5th April, 1837, in *Narrative*, chap. ix.

† See his Despatch dated July 14th, 1837.

which impels a man to admit that he is in the wrong when he has been clearly proved to be so. Nor could he boast of that skill of graceful concession which enables its possessor to recede without discredit from an untenable position. He replied to his Lordship* in the following blunt and explicit terms: "After very deliberate consideration, I have determined to take upon myself the serious responsibility of positively refusing to place Mr. Bidwell on the bench, or to restore Mr. George Ridout to the Judgeship from which I have removed him." He went on to deprecate the necessity for this "overt act of hostility," but added that disobedience on the part of a Lieutenant-Governor does not necessarily imply disaffection to the Minister. He hinted that he was quite prepared for an immediate dismissal. A great part of the despatch was taken up with libels upon Mr. Bidwell and his father. In order that there might be no misunderstanding on the matter, he emphatically repeated his refusal to elevate the former. "So long as I remain Lieutenant-Governor of this Province," he wrote, "I will *never* raise Mr. Bidwell to the bench; and I think it proper to confess to your Lordship that I have at this moment two appointments to make of King's Counsel, neither of which can I conscientiously bestow upon that gentleman." He declined to argue the question as to Mr. Ridout any further, and again refused in the most explicit terms to reinstate him in office. This language left the Colonial Secretary no other discretion than to "accept Sir Francis's resignation," but before this determination was officially conveyed to him the peace of the Province was disturbed by the outbreak of the rebellion.

During the whole summer of this year Mackenzie was doing his utmost to add to the prevalent feeling of discontent against the Government. A superlative bitterness had possessed him ever since the elections, and the fate of his petition had inflamed his resentment almost to madness. He felt that he had been cheated out of his seat, and that nothing was to be hoped for on behalf of either himself or his fellow-workers so long as the existing Government remained in power. To subvert that Government thenceforth became the dominant passion of his life. He was ready to adopt any means, lawful or unlawful, to secure that end. The tone of the *Consti-*

* On the 10th of September.

tution was not to be mistaken. The mind of the editor had evidently run a long course since he had first begun to concern himself with public affairs. In one of the early numbers of the *Advocate* * he had boasted that disloyalty could never enter his breast. "Even the name I bear," he had written, "has in all ages proved talismanic, an insurmountable barrier." What a change had come over him since giving utterance to those words. He now boasted of his "rebel blood," which he declared would always be uppermost. "I am proud," he wrote, "of my descent from a rebel race." † And, as if this were not sufficiently specific, he added: "If the people felt as I feel, there is never a Grant or Glenelg who crossed the Tay and Tweed to exchange high-born Highland poverty for substantial Lowland wealth, who would dare to insult Upper Canada with the official presence, as its ruler, of such an equivocal character as this Mr. What-do-they-call-him—Francis Bond Head." Ever and anon the Tory press retorted on him in a spirit by no means calculated to soften the asperity of his heart. The most contemptuous epithets were freely bestowed upon him, and he was from time to time taunted with his humble origin. It seems almost unnecessary to say that those who indulged in such taunts as these had very little wherewith to reproach Mackenzie on the score of birth and breeding. There must surely be some foul taint in the blood of any man who can stoop to such methods of humiliating a beaten enemy. Still, such insults, coming, as they did, in the wake of serious material injury, added fuel to the flame which burned within Mackenzie's heart like a consuming fire. All the worst part of his nature was up in arms. There were times when he wrote and spoke like one who has lost all self-control. But he was in such deadly earnest that he carried conviction to many a wavering mind. In the Home District, where his paper chiefly circulated, there were scores of people who had seen enough of irresponsible Government to be ready to receive his preachments with favour. His efforts were not restricted to writing virulent articles. He openly went among the people, and disseminated

* See the number for June 10th, 1824.

† This boast seems to have been made in the columns of *The Constitution*, but I have been unable to find it there. I make the quotation on the authority of Mr. Lindsey's *Life of Mackenzie*, vol. i., p. 395, note.

his doctrines by word of mouth. He spoke better than he wrote; and it was only natural that he should exercise a strong influence over the rural communities wherein the Radical element was in the ascendant. His influence became specially conspicuous at this time throughout the Second Riding of York, which he had represented in Parliament, and which, as previously mentioned, had been the scene of much high-handed corruption during the last election contest. The voters of that constituency awoke to the fact that they had been beguiled by the Tories, and that their representative, Mr. Thomson, was not likely to be of much service in the rôle of a Reformer. They eagerly listened to Mackenzie's tabulation of grievances, and cheered him to the echo when he hinted that the time had arrived for the Spirit of Freedom to assert herself.

Among those who warmly sympathized with Mackenzie was Samuel Lount, of Holland Landing, who, it will be remembered, had sat in the last Parliament for Simcoe, and who had been beaten, as he believed, by corrupt methods, at the last election. He had contemplated a petition to the Assembly, but had been discouraged by the conviction that it would be impossible to obtain an impartial inquiry. He now made common cause with Mackenzie in promoting the establishment of a series of "Union meetings," as they were called, in the various townships of North York and Simcoe. These meetings were convened at irregular intervals for the ostensible purpose of political organization. At first they seem to have been conducted with a good deal of craftiness, for as a general thing nothing was said which could in strictness be regarded as treasonable. But there can be little doubt that the intention of the original promoter of these assemblages was the spread of revolutionary ideas, with a view to an ultimate resort to arms, and in a short time the mask of political organization was completely thrown off. Those who had once put their hands to the plough did not care to draw back, and, before they were aware of what they were doing, they found themselves committed to projects of which at the outset they had not so much as dreamed.

Lount's example was followed by most of the leading Radicals among the farming community where he was best known. The Lloyds, Gorhams, Doans, Fletchers and others had long been active advocates of Radical principles, and had marked with ever-growing hostility the tactics of Sir

Francis Head. They saw right persistently violated by might. They saw the respectful complaints and petitions of the people disregarded and set at naught. They saw the Government in the hands of persons who were not only devoid of sympathy with progressive ideas, but who seemed to have no regard for the principles of plain right and wrong. They found themselves of no account in the commonwealth. Their cherished principles were held up to public scorn, and their chosen candidates for Parliament were beaten by fraudulent means. They were utterly without weight in public affairs. After a long and hard fight with the Family Compact, they saw that clique more strongly entrenched in power than ever before. The Tried Reformer who, in response to their long and loud appeals, had been sent over to administer the Government, had stooped to a barefaced violence and tyranny in excess of anything which could be truly charged against the Tory Sir John Colborne. All the old abuses were maintained in full vigour. The incubus of the Clergy Reserves was not removed. Appointments to office were still made from one political body only. The Legislative Council still had the power to paralyze the efforts of the Assembly. The Assembly itself was at present as retrograde as the Upper House, and it had been formed by a corrupt and venal race of officials against whom there was no remedy. The Act to prevent the dissolution of Parliament would probably have the effect of maintaining the existing Assembly for years. To all these evils was now superadded great commercial depression. And there seemed to be no prospect of brighter times. The future seemed overcast and hopeless. Is it any wonder if those who were compelled to contemplate the picture from this dark point of view were forced to the conclusion that a change of any kind must surely be for the better?

It is impossible to say at what precise date the idea of armed resistance to authority was adopted among the rural Reformers, but I can find no distinct trace of it until the 30th of June, when, at a secret meeting held at Lloydtown, a resolution was passed to the effect that constitutional resistance to oppression having been for many years tried in vain, it behooved every Reformer to arm himself in defence of his rights and those of his fellow-countrymen. Within a fortnight afterwards resolutions of a similar character were passed by small gatherings in other

parts of the Home District. As yet, however, the idea of actual rebellion does not seem to have taken definite shape in the minds of the supporters of Mackenzie and Lount. At most, there appears to have been a sort of understanding that recourse to arms was justifiable, and might some day become expedient; but even this view of the case did not meet with universal acquiescence, and the advocates of insurrection sometimes found themselves confronted by hostile majorities, even among assemblies of the most trusted Radicals.

But meanwhile Reformers in the cities and towns were beginning to bestir themselves. Toronto was the headquarters of the Reform party of Upper Canada, and it was natural that the adherents of that party throughout the Province generally should contemplate their proceedings with interest. As yet the idea of an armed rising against the Government had not been seriously hinted at among the Reformers of the capital. Profound sympathy, however, was felt and expressed among them for the Lower Canadians, who made no secret of their determination to rebel in case certain resolutions adopted by the British Parliament, at the instance of the Ministry, were acted upon. These resolutions had been adopted in consequence of the Lower Canadian Assembly's persistent refusal to grant supplies. They authorized the seizure of certain funds in the hands of the Provincial Receiver-General, and the application of them to the general purposes of the Provincial government. Papineau and his adherents had been maddened by this proceeding, and were actively engaged in preparations for an outbreak. The Upper Canadian Reformers warmly sympathized with their neighbours, and passed resolutions condemnatory of the obnoxious resolutions. On the 5th of July, Mackenzie, in the *Constitution*, reviewed the state of affairs in the Lower Province with exceeding boldness. He discussed the probability of an outbreak there, and the chances of success, very clearly indicating his own opinion in the affirmative as to both contingencies. Other Reform papers expressed strong opinions in favour of Papineau's side of the quarrel, but, with the exception of the *Constitution*, none of them ventured to predict and hope for the success of the rebel arms. The fact is, that a comparatively small number of Upper Canadian Reformers were either ripe for or desirous of rebellion. They were aroused to hot anger, and were prepared to advo-

cate the most radical measures of agitation. Their hostility, however, was not chiefly directed against Great Britain, but against Sir Francis Head and those by whom he was surrounded. It was felt that the Home Office had failed in its duty, but the more intelligent were ready to make allowances for the ignorance respecting Canadian affairs of a Minister three thousand miles away. Such were the sentiments of Robert Baldwin and hundreds of other persons the sincerity of whose Reform principles were equally free from doubt. Dr. Baldwin felt and expressed less moderation than his son, though he was not the man to venture upon what he could not have regarded otherwise than as a hare-brained scheme of rebellion, more especially when his chief allies would be composed of the Mackenzie element of Radicals. Rolph and Bidwell were precisely of the same opinion as Dr. Baldwin. They were sick and weary of all that they saw around them. They would have cordially welcomed a bloodless revolution. As for Bidwell, he would gladly have seen the Province quietly absorbed by the United States, for Family Compact domination would then have been at an end, and there would have been a chance for a man to be rated according to his merits. One situated as he was could not be expected to be devotedly loyal to a Government which did its utmost to keep him down, and which raised a lawyer like Jonas Jones to the bench over his head. Like his father before him, he was a republican in principle, and would doubtless have been willing enough to see a republican form of Government established in Upper Canada; but he had never permitted his predilections to interfere with his duties as a citizen and legislator. Moreover, he was before all things a Christian and a man of peace. It is not by such as he that revolutions are planned or accomplished. If questioned on the subject, he would doubtless have admitted that rebellion, under certain circumstances, may be justifiable, but it is hardly possible to conceive of any circumstances under which he could have been induced to take part in such a movement. Assuredly, nothing short of an almost absolute certainty of success would have impelled him to such a course. The inherent probabilities of success in the case of the Upper Canadian rebellion were from the first very few and remote. There was a brief interval during which, owing to the stupidity and supineness of the Government, success might

have been achieved, but whether it would have been temporary or permanent must ever remain an open question. In any case, the contingency was one upon which no prudent man would have allowed himself to count beforehand. As matter of fact Mr. Bidwell had no more to do with the rebellion than had Robert Baldwin.* Dr. Rolph, Dr. Morrison, David Gibson, James Hervey Price, Francis Hincks, John Doel, James and

* Mr. MacMullen, writing, doubtless, from honest conviction, endeavours to convey the impression that Bidwell was more deeply implicated in the rebellion than he chose to acknowledge. See his *History of Canada*, p. 446, note. But no substantial proof has ever been offered in support of such a belief, whereas the proof on the other side is unanswerable. There is, first of all, the character of the man. His moral courage was great, and he could stand up for a cherished principle with much firmness and vigour. But he fought with weapons which were not carnal, and would have suffered almost any wrong that could have been inflicted upon him rather than resort to physical violence. Then, there is the fact that he always denied all knowledge of the rising. No man who knew Marshall Spring Bidwell would have hesitated to accept his bare word as against any but the most direct evidence to the contrary, and in this case there can hardly be said to be any countervailing evidence whatever. Again, there is the fact that he declined to act as a delegate to the proposed Reform convention, as subsequently mentioned in the text. But there is no need to resort to circumstantial or conjectural evidence. We have the testimony of Mackenzie himself, who, after his return to Canada, was ready enough to betray the secrets of his somewhile coadjutors, and who would have been only too glad if he could have pointed to Bidwell as one of the number. In his *Flag of Truce*, published in 1853, he says: "The question is often asked me—What part Mr. Bidwell took in 1837"—and his answer is explicit enough: "None that I know." It is quite certain that Bidwell could not have been concerned in the movement without Mackenzie's knowledge. The only circumstances which might be adduced as indicating a knowledge of the intended rising on the part of Mr. Bidwell are two in number, and neither of them will bear a moment's examination. First, it is true that he was consulted by the Radicals as to the lawfulness of their assembling for drill exercise and other purposes. He advised that, under certain restrictions, such assemblings were within the law, and that there could be nothing culpable in rifle-matches involving mere trials of skill. But when his advice was sought there was no intention, even on Mackenzie's part, to rise at any definite period, and Mr. Bidwell may very well have believed that the projects would end as most of Mackenzie's enterprises had ended—in talk. The other circumstance calling for explanation is his allowing himself to be frightened into leaving the country. This will be duly considered in its proper place. Suffice it for the present to say that, taking everything into account, the mere fact of his expatriation affords no evidence either one way or the other; whereas the attendant circumstances afford strong presumptive evidence of his innocence.

In examining the papers of the late David Gibson within the last few weeks I have come upon what may not unfairly be regarded as conclusive evidence that Bidwell was in no manner privy to the rising. Gibson, after his escape to the State of New York, was desirous of obtaining employment as a land surveyor, and, at Dr. Rolph's suggestion, he wrote to Bidwell for a certificate as to his character, and for advice as to the best means of obtaining employment. Bidwell was then in the City of New York, casting about in his mind to what he should direct his attention as a means of livelihood. His reply and the certificate enclosed therein—both in his own handwriting—are now lying before me. The latter is as follows:—

"I was acquainted with David Gibson, Esquire, until the recent disturbance in Upper Canada, and know that by his integrity, good sense and amiable character, he had acquired the

William Lesslie, John Mackintosh,* and many other leading Reformers were full of vehemence and indignation, ready to go any reasonable length to bring about a state of things more satisfactory to their party; but up to the close of summer I cannot learn that any serious thought of rebellion had taken possession of the minds of any prominent Toronto Reformer with the exception of Mackenzie himself. Even up in North York and Simcoe, where the feeling of discontent was strongest, and where there was much talk about rebellion against the Government, no one seems to have realized or believed that there would be any actual outbreak.

There could be no doubt, however, that the Reformers in both town and country were more thoroughly in earnest than they had ever been

confidence and esteem of his neighbours and acquaintances. His services as a land surveyor were highly valued. Since the trouble commenced in Upper Canada I have not been in communication with him, but I have no doubt that the utmost reliance may be placed on his industry, ability and fidelity in all his engagements. I have seen his name mentioned with respect for his humanity in one of the most violent newspapers published in Upper Canada. He has my warmest wishes for his success and happiness.

"MARSHALL S. BIDWELL."

The following is the text of the letter accompanying the certificate :—

"MY DEAR SIR :

"I received to-day your letter, and have sent you a certificate. I am unable to refer you to any place or situation for employment. I am myself unsettled, and do not know what I shall do or where I shall settle.

"I lament the recent proceedings in Upper Canada, and cannot to this day reflect upon them but with amazement. How men of good sense like you and others could be involved in so absurd and hopeless a project fills me with continual surprise. However, I would not upbraid you, though I shall perhaps be ruined in consequence of these movements. On the contrary, I wish you well, and have the same kind feelings towards you as I was wont to have. I trust you may find some situation where you may be happy.

"Yours truly,

"MARSHALL S. BIDWELL.

"David Gibson, Esq.,

"6th March."

After the publication of this letter—written, it will be remembered, to one of the chief participators in the rebellion—it will hardly be pretended that Bidwell was concerned in the enterprise. It is a characteristic epistle, breathing Christian kindness and good will, and, independently of its bearing upon the question at issue, is well worthy of publication as illustrative of Bidwell's individuality.

*For the sake of consistency I adopt a uniform spelling of this gentleman's name, which however is spelt indifferently "Mackintosh" and "McIntosh," in the Journals of Assembly, in various official documents, in the newspapers and advertisements of the time, and even in private correspondence. Walton's Toronto Directory for 1837 gives it as "McIntosh," which seems to have been the form commonly adopted by members of the family.

before. Energetic measures were in favour among them, and the number of advocates of passive endurance was very small. There were regular communications between them and the opponents of the Government in Lower Canada. They held frequent meetings, at which schemes of agitation were discussed, and where every member was encouraged to speak his mind without fear or favour. A very frequent place of meeting in Toronto was Elliott's tavern, on the north-west corner of Yonge and Queen Streets. A place for holding more secret and confidential caucuses was the brewery of John Doel, situated at the rear of his house on the north-west corner of Adelaide and Bay Streets.* Towards the end of July a number of leading Radicals assembled at Elliott's for the purpose of discussing the draft of a written Declaration, which was intended to embody the platform of the local members of the party. It reads very much like a cautious parody on the Declaration of Independence of the United States, upon which it was evidently modelled. It set forth the principal grievances of which the Reform party complained; declared that the time had arrived for the assertion of rights and the redress of wrongs; and expressed the warmest admiration of Papineau and his compatriots for their opposition to the British Government. It further expressed the opinion that the Reformers of Upper Canada were bound to make common cause with their fellow-citizens in the Lower Province; and to render their coöperation more effectual it recommended that public meetings should be held and political associations organized throughout the country. Finally, it recommended that a convention of delegates should be held at Toronto to consider the political situation, "with authority to its members to appoint commissioners to meet others to be named on behalf of Lower Canada and any of the other colonies, armed with suitable powers as a congress to seek an effectual remedy for the grievances of the colonists." Mr. Lindsey,† doubtless upon the authority of Mackenzie, represents this Declaration as having been the joint work of Dr. Rolph and Dr. W. J. O'Grady, somewhile editor of *The Correspondent and Advocate*. I can find no confirmatory evidence of this

* A part of this building, used as a planing-mill, is still in existence on Bay Street, a short distance north of Adelaide Street.

† *Life of Mackenzie.*, vol. ii., p. 17.

statement, and some of Dr. Rolph's letters would seem, at least by implication, to contradict the assertion that he had any hand in its preparation. The question of authorship, however, is not important. The document was discussed at considerable length. Dr. Morrison, who was present, fully approved of its contents, but objected to sign it, as he would thereby place himself in a dubious position as a member of Parliament. This argument was not acquiesced in by James Lesslie, and the Doctor finally appended his signature. His example was followed by all the other members present except James Lesslie, who withheld his name until the document should be signed by Dr. Rolph, who was absent from the meeting.*

On the afternoon of Friday, the 28th of the same month, the Declaration was submitted to and discussed for the second time by a number of Reformers assembled at Elliott's. There was to be a large meeting the same evening at Doel's brewery, at which it was thought desirable that the platform should be adopted. Some discussion arose as to several clauses, however, and one or two immaterial alterations were made, after which it was thought best to postpone the final adoption of the Declaration in its entirety until a subsequent meeting. The meeting held during the evening at Doel's was very numerously attended. About three hundred persons were present,† and a good deal of important discussion took place. A motion expressive of sympathy and admiration for Papineau and his compatriots was proposed by Mackenzie, and passed without a dissentient voice, and it was resolved that "the Reformers of Upper Canada" should make common cause with those of the Lower Province. The persons present at this meeting of course had no authority to speak on behalf of the Reformers of Upper Canada as a whole, but they fairly enough represented the Radical wing of the party, which was quite large enough to be formidable. The meeting further resolved that a convention of delegates should be assembled at an early period in Toronto, "to take into consideration the

* According to Mr. Lindsey, James Lesslie induced his brother William, who had signed the Declaration, to erase his signature. See *Life of Mackenzie*, vol. ii., p. 18.

† See the evidence of John Elliott, on the trial of Dr. Morrison for high treason, at Toronto, in the following April.

state of the Province, the causes of the present pecuniary and other difficulties, and the means whereby they may be effectually removed;" and that persons be appointed by the said convention to proceed to Lower Canada, "there to meet the delegates of any congress of these Provinces which may be appointed to sit and deliberate on matters of mutual interest to the colonies during the present year." The Declaration was not submitted, as final judgment had not been passed upon it by those who had it in charge. After a long and busy session, the assemblage adjourned to meet in the same place on the evening of Monday, the 31st.

It was matter of much regret among the Radical leaders that Dr. Rolph had not up to this time taken any active part in their deliberations. He was known to be in sympathy with the project of a movement in concert with the Lower Canadians for the purpose of impressing the Imperial Government with the necessity of changing their colonial policy. He had become the trusted counsellor of all the leading Radicals, who looked up to him as the one man in the Province who was capable of directing any large or wise measure of Reform. But he had not identified himself with them by actual coöperation in their projects, and had attended none of their secret meetings, although he was kept fully informed of all that occurred thereat. The Radicals, recognizing how much would be gained by securing the presence among them of Rolph and Bidwell, resolved to press both those gentlemen into service. At the adjourned meeting on the evening of the 31st, the movement made considerable progress. The Declaration was formally adopted clause by clause. According to a contemporary newspaper report,* it "called forth from the meeting the most unequivocal marks of approbation." As already mentioned, one of its clauses recommended the holding of a convention at Toronto. A resolution was accordingly unanimously adopted appointing Rolph, Bidwell, Dr. Morrison, James Lesslie and others as delegates to the proposed convention. This, it was confidently believed, would have the effect of identifying Rolph and Bidwell with the Radical cause, for it was not thought that either of them would refuse to attend as delegates. Other resolutions were adopted with a view to

* *Correspondent and Advocate* for Wednesday, August 2nd.

placing the party in a state of efficient organization throughout the Province. The persons who had previously appended their names to the Declaration* were appointed "a permanent Committee of Vigilance, for this city and liberties, and to carry into immediate and practical effect the resolutions of this meeting for the effectual organization of the Reformers of Upper Canada." John Elliott, a Toronto scrivener, who was also Assistant Clerk of the City Council, was requested to continue to act as Secretary-in-Ordinary, and Mackenzie to act as "Agent and Corresponding Secretary." Both of these requests were assented to. A resolution, doubtless adopted in emulation of similar resolutions at meetings held under Papineau's auspices in Lower Canada, pledged the members to abstain as far as possible "from the consumption of articles coming from beyond sea, or paying duties." A sort of rider to this was moved by Mackenzie, and adopted by the meeting: "That the right of obtaining articles of luxury or necessity in the cheapest market is inherent in the people, who only consent to the imposition of duties for the creation of revenues with the express understanding that the revenues so raised from them shall be devoted to the necessary expenses of Government, and appointed by the people's representatives; and therefore, when the contract is broken by an Executive or any foreign authority, the people are released from their engagement, and are no longer under any moral obligation to contribute to or aid in the collection of such revenues." On Wednesday, the 2nd of August, the Declaration was published in full, together with the names of the committee, in *The Correspondent and Advocate*, and in Mackenzie's *Constitution*. Each of these papers also published a report of the proceedings at the meeting.

The part assigned to Mackenzie—that of "Agent and Corresponding Secretary"—was an important one, and involved him in the necessity of giving up all his time and energies to the cause. In so far as his abilities enabled him to do so, he was to virtually play the same part in Upper Canada that had long been enacted by Papineau in the Lower

* These were nineteen in number, and consisted of Dr. Morrison, John Elliott, David Gibson, John Mackintosh, Dr. O'Grady, E. B. Gilbert, John Montgomery, Dr. John Edward Tims, J. H. Price, John Doel, M. Reynolds, Edward Wright, Robert McKay, Thomas Elliott, James Armstrong, James Hunter, John Armstrong, William Ketchum and W. L. Mackenzie.

Province. He was to be a supreme itinerant organizer, and was to go about the country stirring up opposition to the Government. This would involve the arranging and holding of public meetings and secret caucuses, the selection of local correspondents, the supervision of local reports, and various other duties not definitely specified, much being necessarily left to his own discretion. He had been engaged in precisely similar tasks for some weeks previously, but henceforth he was able to carry out his designs as the accredited emissary of the Reformers of Toronto, a fact which of course gave him additional importance in the eyes of the Reformers generally. His appointment was due to his own manœuvres, but it must be confessed that he was in many respects well qualified for the post.

He addressed himself to his tasks with redoubled assiduity. The Province was mapped out into four districts, each of which was again subdivided into minor divisions. Local branch societies were formed or remodelled in all neighbourhoods where Reformers were numerous. Each of these was directed to report regularly to a central society, and all the latter were to report to the Corresponding Secretary, by whom the reports were classified, digested, and laid before the central committee in Toronto. Mackenzie at once proceeded to hold a fresh series of meetings, beginning with the townships in which he was best known, and thence flitting hither and thither as was deemed advisable. In this way, in the course of the late summer and autumn he went over the whole of the Home District, and over a great part of the adjoining country. His soul was in the work he was doing, and he put into it all the energy which he could command. He did not succeed in arousing such a feeling in the west as Papineau did in the east. He had not Papineau's marvellous Gallic eloquence, nor were the farmers of Upper Canada composed of such inflammable material as the *habitans* of the Lower Province. But Mackenzie, when thoroughly aroused, as he now was, had considerable power to move the masses, and he exerted himself to this end as he had never done before. The manifold wrongs he had endured had exasperated his nature almost beyond endurance, and he could lash himself into a storm of indignation at a moment's notice. He succeeded in awakening enthusiasm in persons who had formerly been remarkable for stolidity.

He presented few new subjects for the consideration of his auditors, but he presented old subjects in a light which was suggestive of new ideas. He declaimed against the iniquities of the Executive, the supineness of the Imperial Government, and the culpable indifference of the British Parliament. The Declaration, in fact, was the text upon which his harangues were founded, but he presented its respective clauses in ever-recurring novelty of aspect. The document was itself submitted to the various meetings for approval, accompanied by Mackenzie's fiery commentary. As a general thing the Radical element was largely in the ascendant at the gatherings, and he had no trouble about carrying his resolutions, frequently by very large majorities. He adapted his oratory to his audience. Where he knew that he would encounter little or no opposition he was much more outspoken than where the feeling was less favourable to him. Wherever he felt that he could carry his audience with him, he boldly advocated separation from the mother-country, and the establishment of elective institutions under an independent Government; though he took care to deprecate any appeal to physical force,* and generally advocated a money payment to the British Government as the price of a full release and quittance of all Imperial claims upon the

* At a meeting held in the township of Caledon, however, during the second week in August, a very outspoken resolution was discussed. After setting out with some general principles as to the duties of kings, governors and subjects, it ran as follows:—"If the redress of our wrongs can be otherwise obtained, the people of Upper Canada have not a just cause to use force. But the highest obligation of a citizen being to preserve the community, and every other political duty being derived from, and subordinate to it, every citizen is bound to defend his country against its enemies, both foreign and domestic. When a government is engaged in systematically oppressing a people, and destroying their securities against future oppression, it commits the same species of wrong to them which warrants an appeal to force against a foreign enemy. The history of England and of this continent is not wanting in examples by which the rulers and the ruled may see that, although the people have been often willing to endure bad government with patience, there are legal and constitutional limits to that endurance. The glorious revolutions of 1688 on one continent, and of 1776 on another, may serve to remind those rulers who are obstinately persisting in withholding from their subjects adequate security for good government, although obviously necessary for the permanence of that blessing, that they are placing themselves in a state of hostility against the governed; and that to prolong a state of irresponsibility and insecurity, such as existed in England during the reign of James II., and as now exists in Lower Canada, is a dangerous act of aggression against a people. A magistrate who degenerates into a systematic oppressor, and shuts the gates of justice on the public, thereby restores them to their original right of defending themselves, for he withholds the protection of the law, and so forfeits his claim to enforce their obedience by the authority of law."—For the text of this resolution I am indebted to Mr. Lindsey. See his *Life of Mackenzie*, vol. ii., p. 27, note.

colony. He employed all the paraphernalia which he thought likely to impress the people, and banners bearing revolutionary inscriptions were freely displayed from the platform in neighbourhoods where such a course was deemed safe. Lount, Gibson, Nelson Gorham and others occasionally reinforced him by their presence and their oratory. These gentlemen were all gifted with more than ordinary powers of expression. The subject-matter was one which they all had deeply at heart, and upon which they could speak with never-failing freshness and vigour. The audiences were sometimes moved to rapturous demonstrations of applause. Even in communities where the popular sentiment was less enthusiastic the recommendations embodied in the Declaration were generally assented to, and local vigilance committees were formed. Delegates to the proposed Toronto convention were appointed, but the date of holding it was for the time left open. About seventy of these delegates were appointed in the Home District alone. The necessity for making common cause with the Lower Canadian Opposition in their efforts to establish civil and religious liberty was vehemently pressed by the speakers, and commonly recognized by the audiences. Any reference on the part of the speakers to what "our brethren in Lower Canada" were doing for the cause of liberty was almost certain to evoke applause. A trusted emissary—Jesse Lloyd of Lloydtown—acted as a medium of communication between the Radical leaders in the two Provinces, and passed to and fro from time to time with despatches and intelligence between Papineau and Mackenzie. By this and other means the Lower Canadian leaders were from first to last kept promptly informed of the progress of the movement in the Upper Province.

Sometimes—not often—Mackenzie met with considerable opposition. The idea of separation from Great Britain was a stumbling-block to a few even of the ultra-Radicals, and had to be handled with extreme delicacy. Others were chary of any concerted action with the Lower Canadians on account of the latter's religious faith. In several instances, moreover, the meetings were actually broken up by the Tories, in whose ears the language used by Mackenzie and his coadjutors was neither more nor less than treason. In other instances, though the opposition was not effective enough to actually break up the meetings, it was found impos-

sible to carry any resolutions founded upon the Declaration. In two cases the meetings were broken up in confusion by local bodies of Orangemen, and a number of persons sustained more or less physical violence. Such incidents as these, however, were the exception, and not the rule. Out of all the meetings—considerably more than a hundred in number*—held between the adoption of the Declaration and the actual outbreak of rebellion, seventy-five per cent. seem to have passed off without serious disturbance or interference. Most of those who disapproved of the meetings staid away from them, and regarded those who promoted them with settled hostility, frequently accompanied by contempt. Of those who attended and supported the resolutions, a very small number had any suspicion that matters were shaping themselves, or were being shaped by Mackenzie, towards rebellion.

As for Mackenzie himself, he seems to have been intent on mischief during the whole summer of this eventful year. He however recognized the necessity of moving slowly, for no one knew better than he that a very small percentage of the Reformers of the Province could be brought to sanction such a project as rebellion under his auspices. What they might have been disposed to do if rebellion had been mooted by Robert Baldwin, Bidwell, Rolph, and other eminent Reformers, it would now be idle to inquire. It would be as profitless as to discuss what would have been the fate of the Revolution of 1688 if James the Second had died while he was Duke of York. The mental constitution of Baldwin and Bidwell were such that it would have been an impossibility for them to take part in a rebellion, and the general belief with respect to Rolph was that his doing so was equally out of the question. All this was well known to Mackenzie. He also well knew that the Reform press would have promptly denounced him had his designs been known. If he had encountered such denunciation his bubble would have burst there and then. But the Reform press knew nothing of his designs. He was believed to be agitating for constitutional Reform. It was of course known that he was carrying his agitation to an unprecedented length,

* Mr. Lindsey places the number at two hundred. See *Life of Mackenzie*, vol. ii., p. 32. I have not been able to find any trace of more than 117. Mackenzie seems to have been present at fully half of these.

but it was supposed that he was doing so for the purpose of intimidating the Government, and thereby coercing them into concessions; and the Reform press throughout the land was fully prepared to support him in such a course. He accordingly acted with much greater caution than he had been wont to display in the management of either public or private affairs. He perceived that the machinery of vigilance committees, branch societies, public meetings and what not, which had been so successfully set in motion under the auspices of the Reformers, might be turned to account for insurrectionary purposes. To a few of his friends in the country, over whom he possessed almost unbounded influence, and who, as he knew, felt almost as bitterly towards the Government as he himself did, he imparted a project involving a resort to arms. Among them were Samuel Lount, Jesse Lloyd, Silas Fletcher, Nelson Gorham and Peter Matthews. The communication was doubtless made to the several persons at different times, but all of those mentioned seem to have been made acquainted with the project before the beginning of autumn. They all yielded a ready enough acquiescence, but no thought of bloodshed was in their minds. It was intended to get together a great body of Reformers from all over the country, and then to advance upon the capital in the form of a monster demonstration. This idea seems to have originated with Lount. It was at first objected to by Mackenzie as unlikely to prove efficacious. He urged that demonstrations had been made in his favour several years before, and that none of them had had any effect in moderating the policy of the Government, or in inducing the Assembly to permit him to sit therein. He especially instanced the occasion upon which a great crowd of the York electors had accompanied him to the House of Assembly, and had filled the galleries and lobbies while Parliament was sitting.* All this, he pointed out, had been labour in vain, and if such a scene were to be re-enacted it must, in order to produce any satisfactory effect, be on a very large scale indeed. His argument was unanswerable. It was clear that any appeal to the Government's sense of right would be made in vain, and that they could only be influenced through their fears. If anything was to be effected by means of a demon-

* *Ante*, p. 256.

stration, the number of persons taking part in it must be sufficiently numerous to overawe, and if necessary to coerce, the Government.

Some weeks appear to have elapsed before any scheme was definitely fixed upon and approved by all the nine or ten persons concerned, who thus took upon themselves the responsibility of directing the future course of our colonial polity. The understanding arrived at was that the time of holding the proposed convention in Toronto would also be the appropriate time for making the proposed demonstration. The convention would afford a reasonable pretext for the assembling of great numbers of Reformers at the capital. It will be remembered that no definite time had been fixed upon for the holding of the convention. It was now settled that it should be held early in the spring of the year 1838. When the gathering should be complete, it was proposed to wait upon the Government, as the barons waited on King John at Runnymede, and wring from them their assent to a constitution founded upon the propositions embodied in the Declaration. It was agreed that if this assent should be obtained, Sir Francis Head was, at any rate temporarily, to be left undisturbed in his position of Lieutenant-Governor, but that the Executive Council should be altogether remodelled, and that Rolph, Bidwell and Mackenzie should have seats therein. The Government was to be carried on upon the principle of Executive responsibility to the Assembly. This re-adjustment was to be followed by a general election, after which the future of the colony would be in the hands of the Assembly.

But how if the Government would not be coerced? What was to be done if they refused to be dictated to? In that case there was only one course open. The Lieutenant-Governor and his Council were to be seized with as little violence as possible. A Provisional Government was to be formed with Dr. Rolph at its head, provided that that gentleman could be induced to accept the position. It was not believed that the carrying out of this project would necessarily involve any sacrifice of life, for the force at the disposal of the Provisional Government would be such as to render any opposition futile. Moreover, the bulk of the population of the capital were known to be favourable to Reform principles, and it was believed that they would readily take part in the movement if they saw an assured prospect of success.

The conspirators were sanguine as to obtaining Rolph's coöperation, for, unlike Bidwell, he had not repudiated the position of a member of the convention, which had been thrust upon him by the meeting at Doel's brewery in July. Bidwell, immediately upon becoming acquainted with what had been done, had notified the secretary that he had withdrawn from political life, and that he could have nothing to do with the proposed convention. Rolph also had at first felt disposed to decline the appointment, but he had taken time to consider, and had talked the matter over with Dr. Baldwin, who had strongly counselled him to accept. I can find no documentary evidence of either acceptance or rejection on his part, but he seems to have been favourable to the holding of the convention, which he doubtless regarded as a possible means of consolidating the Reform party, and of rendering its opposition to the Government more effective. It was agreed that for the present nothing should be said to him about the contemplated subversion of the Government by force. The boldest features of the scheme were intended to be kept secret from nearly everyone until the time for action should be near at hand, but no oath of secrecy was imposed, and, in spite of all resolutions, more or less accurate hints of what was in contemplation were conveyed to hundreds of Radicals throughout the Home District and elsewhere.

As the autumn advanced, the conspirators proceeded to prepare their adherents for the impressive display of the ensuing spring. It was evident that even a very numerously-attended demonstration would not impress the Government unless those taking part in it carried about with them a suggestion of strength. In order to be strong they must have arms, and they must furthermore know how to use them should the necessity arise. A system of secret training and drill was accordingly organized throughout the townships. People met after nightfall in the corners of quiet fields, in the shadow of the woods, and in other sequestered places, and there received such instruction in military drill and movements as was possible under the circumstances. Old muskets, pistols and cutlasses were furbished up after long disuse, and pressed into service once more. Small quantities of rifles and ammunition were surreptitiously obtained from the United States. Disaffected blacksmiths in the rural districts devoted themselves to the manufacture of rude

pike-heads, which, after being fitted to hickory handles of five or six feet in length, formed no contemptible weapons for either attack or defence. Lount's blacksmith shop at Holland Landing was for some weeks largely given up to this manufacture. As there was no attempt at interference with these proceedings, the disaffected became bolder, and began to assemble at regular periods to engage in rifle practice, pigeon-matches, and the slaughter of turkeys. As intimated in a previous note,* Mr. Bidwell was applied to for a legal opinion as to the lawfulness of such gatherings. He advised with great caution, specifying how far he conceived this sort of thing might be carried with impunity. Gatherings for the slaughter of birds and for trials of skill with the rifle he conceived to be clearly within the law.

Before the middle of October the movement had extended in all directions. The four districts into which the Province had been mapped out were called respectively the Toronto Division, the Midland Division, the Western Division and the Eastern Division. The first-named consisted of the counties of York, Simcoe, Durham, Halton, Wentworth, Haldimand and Lincoln. The second included the counties of Northumberland, Hastings, Prince Edward, Frontenac, Lennox and Addington. The Western Division consisted of Oxford, Norfolk, Middlesex, Huron, Kent and Essex; and the Eastern included all that portion of the Province to the east and north-east of the Midland. Preparations for the demonstration were more or less active everywhere, and there were nights when the whole country side might be said to be in arms. In some portions of the Western Division, which was under the direction of Dr. Charles Duncombe, the feeling against the Government was as intense as in any part of the Home District, and the preparations there were carried on with special activity. Dr. Duncombe and a few leading personages among the Radicals were entrusted with the full plan of the conspiracy, so far as it had been matured; but in no part of the Province were the rank and file taken into anything like full confidence. Most of those who engaged in drill, and in the manufacture of pike-heads and handles, supposed that they were merely getting ready for a formidable procession which was to intimidate the Government by reason of its numerical strength.

* *Ante*, p. 362.

The enquiry may not unnaturally be made: What were the Government about all this time? Were they in total ignorance of what was going on all around them? Not at all. They were kept regularly informed of the banners, speech-makings, drillings, pigeon-matches and what not; and —at least in some instances—they contrived to obtain pretty accurate reports of the proceedings at Mackenzie's meetings. But they committed the grave error of undervaluing their opponents. They would not believe it possible that Mackenzie could ever again be dangerous. He had been so completely worsted in his hand-to-hand fight with Toryism that it was not to be credited that he would ever again be able to secure a following large enough to be worth seriously considering. True, he threatened all manner of dire calamities, but he had for so many years been accustomed to indulge in loud-mouthed threats that he had lost all power to create alarm. He was like the shepherd's boy who had cried "wolf" so often that nobody paid heed to him. The official party spoke of him as an upstart mannikin who had enjoyed his little day of notoriety, but whose power for either good or ill was past and gone. Sometimes, when he published anything of special ferocity in his paper, the attention of the Lieutenant-Governor would be drawn to it by his supporters, who would urge that a prosecution should be instituted. But Sir Francis's wiser counsellors knew better than to adopt any such foolish course. They knew that State prosecutions had done more to alienate popular sympathy and to weaken the power of the Government in times past than any other cause whatever. The editor of the *Constitution*, they believed, had steadily lost his influence—an influence which he could never hope to regain unless some imprudent act of his enemies should once more create for him a specious sympathy and notoriety. Nothing, it was felt, would be so certain to give him a fictitious importance as to prosecute him for treason, at least until he should proceed to such lengths as to render a prosecution imperative. Sir Francis Head, Chief Justice Robinson, Attorney-General Hagerman, Judge Jones, and the whole race of officialdom refused to believe in the possibility of an actual rebellion. They all declared that there were not fifty men in the Province who would consent to take arms against the Government. Plenty of low Radicals, it was said, were ready enough to boast and bluster, but their courage was only

skin-deep. As for Mackenzie, he was admitted to be an exception, so far as the mere disposition to rebel was concerned, but he had lost any influence he had ever possessed, and counted for nothing. It was tolerably certain that he would sooner or later overstep the limits at which it would be possible to leave him alone. Then, when he should have placed himself in such a position that no loyal subject could defend him, would be the time to make an effectual disposition of him. By all means, then, give him an abundance of rope. This was the spirit in which the little man and his proceedings were regarded by the authorities, and he availed himself of the freedom of speech and action to the fullest conceivable extent. "First," says Sir Francis,* "he wrote, and then he printed, and then he rode, and then he spoke, stamped, foamed, wiped his seditious little mouth, and then spoke again; and thus, like a squirrel in a cage, he continued with astounding assiduity the centre of a revolutionary career." Attorney-General Hagerman was instructed to report to his Excellency as soon as Mackenzie had proceeded so far in the direction of treason that his conviction would be certain, and meanwhile he was permitted to invoke the Spirit of Freedom, both in prose and poetry, to his heart's content.

In the Lower Province matters had so shaped themselves as to favour Mackenzie's designs. Sir John Colborne was kept tolerably well informed as to the proceedings of Papineau and the other fomenters of revolt, and he had become aware that he would very soon be compelled to have recourse to the strong hand. He felt perfectly secure, but at the same time determined to neglect no precaution which might conduce to a swift and decisive victory. He mustered all the forces at his command, and satisfied himself, from personal supervision, as to their efficiency. There were a few troops stationed in Toronto. Sir John shared Sir Francis Head's confidence in the loyalty of the Upper Canadians, and acquiesced in the opinion that an Upper Canadian rebellion was altogether out of the question. As he believed that there was no likelihood of the troops being needed there, he deemed it prudent to strengthen his position by removing them to Kingston, where they

* *The Emigrant*, p. 157.

would be more readily available in case of his requiring their services to crush the rebellion in Lower Canada. When this removal had been effected, Toronto was left wholly unguarded by military. By command of the Lieutenant-Governor, several thousand stand of arms which had recently been sent from Kingston, together with a quantity of ammunition, were committed to the custody of the municipal authorities and deposited in the City Hall. Two constables were placed in charge, and this was absolutely the only precaution taken against the seizure of both arms and ammunition by any determined body of men who might think proper to possess themselves thereof.

Mackenzie believed that the propitious time had arrived, and that the resolve to postpone until the following spring any active measures against the Government should be rescinded. He received an additional impetus from certain messages which reached him through Jesse Lloyd, on Monday, the 9th of October, from the leaders of the movement in Lower Canada. These messages apprised him that the French Canadians were about to make what they called a "brave stroke for liberty" without further delay. They entreated him to coöperate with them by simultaneously raising the standard of revolt in the Upper Province. Lloyd himself favoured the idea, and counselled its adoption.

Such a momentous step, however, could not very well be taken without the concurrence of others. Mackenzie, who at the time of receiving the messages was out on Yonge Street, some miles from Toronto, hastened into town, and summoned a small secret caucus to meet at Doel's brewery. I am unable to fix the exact date of holding this caucus, but it must have been on the evening of either Monday the 9th or Tuesday the 10th of October.* Eleven persons were present. They were, 1. Mackenzie himself; 2. John Doel, the owner of the brewery; 3. Dr. Morrison; 4. John Mackintosh, who sat in the Assembly for the Fourth Riding of York; 5. John Elliott, who, as already mentioned, acted as Secretary-in-Ordinary to the Reform Union meetings in Toronto; 6. Timothy

* John Elliott, in his testimony on Dr. Morrison's trial, places the date in October; and I have evidence in my possession that Mackenzie received the intimation mentioned in the text on the second Monday in October. The second Monday fell on the 9th. There would be no delay in summoning the caucus, which would therefore be held on the evening of either Monday or Tuesday.

Parson, who kept a straw bonnet and fancy warehouse on King Street; 7. Robert Mackay, a grocer and wine merchant; 8. William Lesslie, one of the firm of Lesslie & Sons, booksellers, stationers and druggists, at number 110½ King Street; 9. John Armstrong, a manufacturer of edged tools, having a place of business at number 33 Yonge Street; 10. Thomas Armstrong, a carpenter, residing at number 11 Lot (now Queen) Street; 11. John Mills, hatter, 191 King Street. Dr. Rolph and J. H. Price had been asked to attend, but they did not see fit to do so. No one except Mackenzie appears to have had any idea of the real object for which the meeting had been summoned. The other ten merely repaired to the appointed place to hear whatever communication the Agent and Corresponding Secretary might have to make to them. Upon being called upon to state the purpose for which he had called them together, Mackenzie proceeded to unfold his project. He had no sooner entered upon it than he encountered murmurs and expressions of dissent. He stated that he could count upon the active coöperation of at least fifteen hundred men in the Home District alone, of whom, however, not more than a third were supplied with arms. Beyond the limits of the Home District he could count upon from two to three thousand, but of these not one-fifth were properly armed. All these, he declared, might be implicitly depended upon to support any project which might then and there be determined upon. He proposed to send out trusty messengers in all directions to summon these "good men and true" to repair at once to Toronto. But there was no need, he said, to wait for the arrival of these supporters. He had taken pains to ascertain the exact condition of the city, and it was absolutely defenceless, owing to the sending away of the troops. Why should not the decisive blow be struck at once? Why not instantly send for Dutcher's* foundrymen and Armstrong's axemakers, all of whom were true to the good cause? With these men at their backs, they might proceed straightway to Government House and seize Sir Francis, who had just come in from his daily ride on horseback, and who was guarded

* William A. Dutcher had a foundry on Yonge Street, where a good many hands were employed, most of whom were readers of the *Constitution*, and supporters of the Radical cause. The Armstrong whose axemakers it was proposed to press into service was John Armstrong, who was himself present at the meeting.

by only one sentinel. His capture having been effected, they might proceed to the City Hall and seize the arms and ammunition. The next thing would be to proclaim a Provisional Government, and give Sir Francis the alternative of conceding what the Radicals demanded or taking the consequences of refusal. There was absolutely nothing, Mackenzie averred, to interfere with the carrying out of this programme. Four-fifths of the citizens would join them when they saw that success had attended their efforts, and of the other fifth at least half would remain neutral, while the small residue of the population would be too insignificant in point of numbers to render it possible for them to offer any serious opposition.

Such was the astounding scheme propounded by Mackenzie. His small audience could hardly credit the evidence of their senses. When he had proceeded thus far, Dr. Morrison could restrain himself no longer, but burst forth with an impetuosity and indignation which had but seldom been observed in him. He asked if it was possible that Mackenzie could be serious in unfolding so foolhardy a design. "This," said he, "is treason; and if you think to entrap me into any such mad scheme, you will find I am not your man!" He declared that if another word were said on the subject he would forthwith leave the room. The others present also repudiated the proposal with more or less of vehemence, but they all regarded it as a mad freak of Mackenzie's, and hardly worth grave consideration. Mackenzie found that nothing was to be done, and a few minutes later the little conclave broke up.

On the following day Mackenzie called upon Dr. Rolph, who had meanwhile heard from Dr. Morrison of the proposal of the previous evening. Dr. Rolph questioned Mackenzie strictly respecting the accuracy of his details as to the number of men who could be depended upon as adherents in the event of a revolution. Mackenzie repeated his assertion that about four thousand could easily be got together, every one of whom was ripe and ready for taking up arms. He produced certain documentary evidence which went to confirm the truth of his statements, and vehemently declared that a successful revolution was not only feasible, but inevitable. He proposed not to wait for the proposed convention, but to speedily assemble all the men who could be

got together at some point within a few miles of the city. This he proposed to effect as secretly as possible. The men could then advance upon the city and proceed in a body to the City Hall, where they could possess themselves of arms and ammunition. They would then be masters of the situation, and could set up a Provisional Government on such terms as might be agreed upon. Dr. Rolph was so far impressed by the documentary and other evidence placed before him that he consented to give the matter his consideration, and to discuss it with some of his friends.

After turning the subject over in his mind, Dr. Rolph appears to have arrived at the conclusion that the subversion of the Government was perfectly feasible. The capital of the Province was defenceless. The Lieutenant-Governor had not only sent away the troops, but had persistently refused to take any steps for the organization of the militia. If several thousands of the people were really disposed to assert themselves, there was nothing to prevent them from carrying out the programme outlined by Mackenzie. They could capture Toronto and seize the members of the Government before any measures could be taken to successfully oppose them. This having been quietly effected without bloodshed, it seemed probable enough that the population at large would not refuse their support. The Reformers of the Province constituted a large majority of the inhabitants, and there was not a Reformer in Upper Canada but was heartily weary of Sir Francis Head and his clique. Only a small minority would have consented to enter upon the risks and dangers of a rebellion; but there is a great difference between a rebellion to be encountered and one which has been successfully accomplished. Thousands of persons who would strenuously refuse to have any connection with the former would readily acquiesce in the latter. If the Government were once subverted and in the hands of the Reformers, and if the entire Reform element were in sympathy with the change, the rebellion would so far be a success, for at this time there were comparatively few persons in the Province who cared sufficiently for the Family Compact to risk life or limb for the purpose of restoring them to power. But there was another important question to be considered: What would the Imperial Government have to say about it? If the might and

majesty of Britain were to be enlisted against the project, no Upper Canadian rebellion could hope for permanent success, unless in the very unlikely event of national interference on the part of the United States. But was it not probable that the Imperial Government would be strongly impressed by this uprising of a long-enduring and much-wronged people, and that a sense of justice would compel them to adopt a new policy with respect to the Canadas? Should this conjecture prove to be correct, all that was sought to be effected by rebellion would have been accomplished. In any case, the condition of the Reformers could hardly be altered for the worse. The leaders of the movement would be driven to take refuge in the States, but some of them had already begun to regard such an emigration as desirable, for there seemed to be no future for them under Family Compact rule.

With such thoughts as these passing through his mind, Dr. Rolph had several conferences with Dr. Morrison, with whom Mackenzie also had some conversation after the caucus at the brewery. Dr. Morrison was disposed to attach great weight to any suggestion emanating from his professional colleague, and when he had been placed in possession of the latter's views he was able to contemplate a rising of the people with much greater complacency than before. The idea gradually took form and shape in his mind. At Mackenzie's urgent request he gave him a letter introducing Jesse Lloyd to Dr. E. B. O'Callaghan, of Montreal, who was editor of a Radical newspaper, and known to be favourable to insurrection. Lloyd was about to start from his home in the township of King on one of his expeditions to the Lower Province, to confer with the leaders of the insurrectionary movements there. This was sometime during the third week in October.

Dr. Morrison, having thus put his hand to the plough, regarded himself as in a measure pledged to support the cause of the people, if they were really bent on subverting the Government. One day about a fortnight later he received an urgent message from Dr. Rolph to call at the latter's house on Lot (Queen) Street. Upon repairing thither he found Rolph and Mackenzie in conference with Lloyd, who had just returned from the Lower Province with a letter to Mackenzie from Thomas Storrow Brown, one of the directors of the

insurrectionary movement there. The letter seemed, on the surface, to be a mere business communication, but its phraseology had a secret meaning understood by Mackenzie, who expounded it to the others. Lloyd supplemented the letter by certain verbal communications. It appeared that the Lower Canadians were prepared to act, but they wished the Upper Canadian Radicals to make the first move, so as to divert attention from their proceedings. This would involve grave consequences, and could not be resolved upon all in a moment. After some consideration, it was agreed that Rolph, Morrison and Mackenzie should meet at Morrison's house on Newgate (Adelaide) Street that same evening to take serious counsel together. The meeting was held as agreed upon. Rolph and Morrison pointed out to Mackenzie the momentous consequences which would flow from acting on the suggestion from Lower Canada. They expressed some doubt as to whether the people were really sufficiently desirous of a change to risk their liberties and lives in a rebellion, and they pointed out the disastrous consequences of failure. Mackenzie, however, who possessed much better opportunities for judging as to the bent of popular opinion among the Radicals, would hardly listen to such remonstrances. For the hundredth time he pointed out the defenceless state of the capital. Within the last few days the troops which had been removed from Toronto to Kingston had been withdrawn from the Province altogether by Sir John Colborne, in order that they might be used against the rebels in Lower Canada. The whole of the Upper Province was therefore without means of defence. Mackenzie pledged his word that the whole Radical element were anxious to rise in the good cause. He asserted that he had received lists signed by thousands of persons, each one of whom had pledged himself to rise in revolt at any moment when summoned. Rebellion, he declared, must come, as the spirit of insurrection had been thoroughly aroused; and he upbraided his interlocutors for their lukewarmness in the cause of the people. After several hours of discussion and deliberation it was agreed that Mackenzie should proceed through the country and distinctly submit the question to the different political unions. If they really felt ready and anxious to put down the existing Government by force of arms, as Mackenzie declared, they should have their way. A plan was

discussed for seizing the arms in the City Hall, for taking into custody the chief Government officials, and for establishing a Provisional Government with Dr. Rolph at its head. All this, it was believed, could be easily effected without firing a shot, and without the sacrifice of a single life. It was also distinctly understood that private property was to be respected, and that all money in the banks was to be regarded as private property, except such as actually belonged to the Government. It was however expressly stipulated that nobody was to be finally committed to any definite course of procedure until Mackenzie's return from his rural tour with the sanction of the various political unions. No authority whatever was meanwhile given to Mackenzie, either expressly or by implication, to stir the people up to rebellion. He was simply authorized to ascertain their views. At his own urgent request permission was given him to use the names of Rolph and Morrison, but only so far as to state that if the people were really desirous of effecting a revolution, they might depend upon receiving the countenance of those two gentlemen. On this distinct understanding Mackenzie left Dr. Morrison's house, and started the same night or early on the following morning for the north.

NOTE TO CHAPTER X.

My authorities for the foregoing chapter are too numerous for citation. In addition to printed works and official records, they consist of manuscript letters, statements, affidavits and other documents which have never seen the light, and the most important of which will be given, in whole or in part, in the second volume.

END OF VOL. I.

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